

SCOTTSDALE AIRPORT SOUTH THUNDERBIRD PARCEL
REQUEST FOR PROPOSALS
April 26, 2006

The City of Scottsdale ("City") is seeking sealed proposals for a lease and commercial development of the 8.75-acre South Thunderbird Parcel ("STP") at Scottsdale Airport located on the southeast corner of Scottsdale Road and Thunderbird Road directly on the approach end of Runway 03 and the departure end of Runway 21 in Scottsdale, Arizona. Deed restrictions for land use on this parcel prohibit certain retail uses. Ancillary retail may be considered to support the primary use.

The City envisions a land lease ("Lease") term of twenty (20) years, with two, ten (10) year extensions. The base rent shall consist of an annual amount per square foot per year paid monthly with acceptable bids being at least \$3.00 per square foot per year.

There will be a mandatory pre-proposal conference at 2:00 p.m. (local time) on May 11, 2006, in the Scottsdale Airport Terminal Building, 2nd Floor Conference Room, 15000 North Airport Drive, Suite 200, Scottsdale, AZ 85260.

Sealed proposals shall be mailed or hand delivered to Jennifer Lewis, Aviation Planner, Scottsdale Airport, 15000 North Airport Drive, Suite 200, Scottsdale, AZ 85260. PROPOSALS ARE DUE AND WILL BE OPENED AND ACKNOWLEDGED AS A MATTER OF PUBLIC INFORMATION AT 1:00 PM LOCAL TIME, FRIDAY, JUNE 20, 2006. Bid packets/information can be obtained from the Scottsdale Airport website at www.Scottsdaleairport.com, or by calling Jennifer Lewis at 480-312-7609.

Proposals shall remain in effect until the Lease Agreement is executed and authorized by City Council or 90 calendar days after the bid opening, whichever occurs first.

Forms and information required for submittal with this Request for Proposals shall become the property of the City and will not be returned to the proposer.

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**Land Lease and
Development on the
South Thunderbird Parcel
Scottsdale Airport**



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REQUEST FOR PROPOSAL LAND LEASE AND DEVELOPMENT ON THE SOUTH THUNDERBIRD PARCEL AT SCOTTSDALE AIRPORT APRIL 26, 2006

1. INTRODUCTION:

The City of Scottsdale ("City") is seeking sealed proposals for a lease and commercial development of the 8.75-acre South Thunderbird Parcel ("STP") at Scottsdale Airport (see Exhibits "A," "B," and "F"). The STP is zoned I-1 and located on the southeast corner of Scottsdale Road and Thunderbird Road directly on the approach end of Runway 03 and the departure end of Runway 21. Several hundred aircraft operations overfly this parcel daily; therefore, development proposals must consider structure height and aircraft noise sensitivity issues in addition to allowed zoning uses.

Further, deed restrictions for land use on this parcel prohibit certain retail uses. Ancillary retail may be considered to support the primary use. A copy of those restrictions is provided in Exhibit "E" - Deed Restrictions. Access to the site is currently only available on Thunderbird Road; however, possible access from Scottsdale Road may be considered. The City is currently planning roadway and drainage improvements for Thunderbird Road, Scottsdale Road, and 73rd Street that are scheduled to begin in fall 2006, with anticipated completion in winter 2007.

2. LEASE TERM:

The City envisions a land lease ("Lease") term of twenty (20) years, with two, ten (10) year extensions, subject to the general terms and conditions provided in the sample lease attached as Exhibit "C" – Sample Lease Agreement. The Lease term will commence on the date the Lease is approved by the Scottsdale City Council.

3. LEASE AREA/ENVIRONMENT:

The development site is approximately 8.75 acres, located on the southeast corner of Scottsdale Road and Thunderbird Road, bordered by Scottsdale Road on the west, Thunderbird Road on the north and a drainage canal along the east and south sides, as depicted in Exhibit "B" - Site Map. In Summer/Fall 2006, roadway and drainage construction is programmed for the drainage along Scottsdale Road and the intersections of Scottsdale Road at Thunderbird and Thunderbird at 73rd Street. The programmed modifications will provide additional turn lanes and queuing, as well as cover the existing drainage channel, and install new sidewalk and landscaping. The successful proposer ("Developer" or "Lessee") will be responsible at its own expense for all improvements necessary for construction and operation of the proposed development in accordance with zoning and deed restrictions in Exhibit "D" - Zoning and Parcel Restrictions and Exhibit "E" - Deed Restrictions. Proposers should form their own conclusions regarding the costs of their required improvements and occupancy.

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4. RENT/LEASE FEES:

Beginning immediately after the City issues a Certificate of Occupancy for the STP or within two (2) years of the date the Lease commences, whichever occurs first, the base rent shall consist of an annual amount per square foot per year paid monthly with acceptable bids being at least \$3.00 per square foot per year.

5. PRE-PROPOSAL CONFERENCE:

There will be a mandatory pre-proposal conference at 2:00 p.m. (local time) on May 11, 2006, at Scottsdale Airport Terminal Building: 15000 North Airport Drive, Suite #200, Scottsdale, AZ 85260, in the Conference Room. Failure to attend this mandatory meeting will automatically disqualify a proposer.

6. FORM OF LEASE:

The City will require the selected proposer to participate in discussions to implement the proposal and to submit such cost, technical, or other revisions to their proposals as may be necessary to produce a final lease agreement. The office of the City Attorney shall draft all final lease documents that may result from this Request for Proposals ("RFP"). A sample of the draft lease is attached as Exhibit "C" – Sample Lease Agreement to this RFP. The attached Sample Lease Agreement is for non-aviation use(s). The final Lease will be based on this form and prepared by the City Attorney's office modified as necessary to incorporate aviation use(s) if applicable and the terms of the successful proposal. Proposers should be prepared to execute the Lease in its current form before presentation to the City Council, subject only to modifications essential to reflect the business terms proposed. Proposers should use the form lease to anticipate information that will be necessary to finalize the lease and should provide such information with their proposals. Proposers should explain the business terms of their proposal but not attempt to suggest specific wording for the lease. The City recognizes that certain provisions of the form lease may not apply to some proposals. After a proposal is selected, the form lease will be edited by the City Attorney's Office to implement the proposal selected. Irrelevant terms will be removed and new terms added as necessary to implement specific business points with lease language changes being limited to these purposes. The principal portions of the form lease the City anticipates will need to be modified to implement the selected proposal are the provisions defining the Lessee's obligations including, but are not limited to:

- A. Approved uses.
- B. Addition or removal of existing structures.
- C. Rent amount.
- D. Specific improvements proposed.
- E. Design and construction schedule.

7. ADDITIONAL TERMS:

The Lease requires the Lessee to give the City access to business and other records pertaining to Lessee's performance under the Lease. The Lease will restrict permitted uses allowable under the applicable zoning ordinance (see Exhibit "D" – Zoning and Parcel Restrictions) and deed limitations (see Exhibit "E" – Deed Restrictions). Lessee is required to comply with all

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applicable laws and regulations. The Lessee's interest under the Lease is not assignable without prior written consent of City. The Lease is subject to termination by the City (and other remedies) in the event of a breach by Lessee as stated in the sample lease agreement. Rent is subject to periodic escalation each three years based upon the Consumer Price Index ("CPI"). The City will not allow temporary uses by the Developer prior to City's issuance of the Certificate of Occupancy.

8. ADDITIONAL INFORMATION:

Nothing in this RFP should be construed as an obligation on the City of Scottsdale's part to reimburse any party for any expenses incurred in the development of plans for this project. This RFP does not commit the City to enter into an agreement, to pay any costs incurred in the preparation of a proposal to this request or in subsequent negotiations, or to contract for the project. The City may use as its own, without payment of any kind or liability therefor, any ideas, suggestions, layout, or plan received during the proposal process

Developer must accept the STP in "as is" condition. The Developer is responsible for preparation of the site for development including, but not limited to, removal of existing structures. All improvements shall require the prior approval of the City and otherwise comply with the provisions of the Lease.

Information provided by the City in connection with this RFP is believed correct, but all proposers should perform their own investigation of the project and independently confirm for themselves any information provided by the City.

Requests for additional information relating to the terms and conditions of this RFP and specifications, must be made in writing by May 24, 2006, by 4:00 p.m. and directed to Jennifer Lewis, Aviation Planner, 15000 North Airport Drive, Suite 200, Scottsdale, AZ 85260, by fax to (480) 312-8480, or by email to jmlewis@scottsdaleaz.gov.

The successful proposer will be required to execute a lease agreement ("Lease") substantially in the form attached as Exhibit "C" – Sample Lease Agreement and perform all obligations thereunder. The Lease becomes binding upon the City upon authorization by the Scottsdale City Council, execution by the City, and delivery to the Lessee.

9. TAXES:

Leases with the City are not exempt from the State of Arizona, Maricopa County or City of Scottsdale transaction privilege taxes. In addition to payments required under the Lease, transaction privilege ("sales"), and all other taxes at the rate provided by law, shall be paid by Lessee in addition to any taxes imposed on Lessee's business activities conducted at this location. Questions pertaining to the applicability of taxes should be directed to the following: City of Scottsdale Tax & License Division at (480) 312-2400; Maricopa County at (602) 255-2060 or (602) 542-2076, ask for TPT Auditing; and for State of Arizona at (602) 716-6651.

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10. RULES:

All proposers must be of good moral character and must not have been convicted of a felony or a crime involving moral turpitude in the last ten (10) years. All proposers must agree to submit to any background checks as deemed necessary by the City.

The successful proposer shall fully comply with all laws, ordinances, rules and regulations of the United States, State of Arizona and the City of Scottsdale, including specific City regulations related to real estate lease agreements/building permits and fees/zoning/use permit stipulations and regulations regarding alcoholic beverages, nuisance abatement, immoral conduct, smoking/non-smoking, privilege, and use excise taxes.

11. ORAL INSTRUCTION-INTERPRETATION:

The City of Scottsdale will not be responsible for proposers adjusting their proposals based on oral instructions by any member of the City staff. Proposals deviating from the specifications contained herein by any means other than written addendum issued by the City will be subject to rejection. The sample lease document in Exhibit "C" – Sample Lease Agreement controls any conflict with the RFP documents.

12. ADDENDA:

Addenda, if any, will be issued in writing and be delivered by regular mail, fax or email. Any addendum issued as a result of any change in this RFP must be acknowledged by attaching copies of all addenda to the submitted proposal. Failure to indicate receipt of addenda in the above manner will result in a proposal being rejected as non-responsive. All addenda for this RFP will be posted on the Internet at Scottsdale Airport's web site, www.ScottsdaleAirport.com. It is the proposers' responsibility to verify receipt of all addenda prior to submitting a proposal.

Failure of any proposer to give notice, in the form of written questions, during the pre-proposal period, of any item or issue contained in this RFP that should not be included or amended, or that the City failed to contain in this RFP that should have been included, and by such notice, the City could have cured the problem if such item or issue had been raised or objected to, such failure to give notice shall constitute a waiver by the proposer(s) of its right to object to the inclusion or lack of inclusion of the item or issue in the RFP in any subsequent protest filed by any unsuccessful proposer(s).

13. PROPOSAL SUBMITTAL:

A completed proposal document (including all of the information requested in this RFP) must be submitted to constitute an acceptable proposal.

One original plus five (5) complete sets of the proposal must be submitted in a sealed envelope addressed to Jennifer Lewis, marked with the words "PROPOSAL FOR SOUTH THUNDERBIRD PARCEL" plainly marked on the envelope. The name and address of the proposer must also appear in the upper left corner of the envelope. The City is not responsible for the premature opening of a proposal that is not properly addressed and identified. Proposals will not be accepted via fax or email.

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14. PROPOSAL GUARANTEE:

Each proposal must be accompanied by a cashier's check made payable to the order of City of Scottsdale in the sum of One Hundred Thousand Dollars (\$100,000), or a bond with sufficient sureties to be approved by the City in a sum equal to One Hundred Thousand Dollars (\$100,000), and naming City of Scottsdale as obligee. Each bond shall be executed solely by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the State Department of Insurance pursuant to Arizona Revised Statutes Title 20, Chapter 2, Article 1. The bonds shall not be executed by an individual or personal surety or sureties.

Proposal guarantees shall be returned to all except the two most responsive proposers within ten (10) days after approval of the Lease by the City Council and execution by the City. The remaining guarantees will be returned within ninety (90) days after approval of the Lease. Notwithstanding the previous sentence, if the successful proposer fails to agree to the terms and conditions of the attached lease and any subsequent addenda, its proposal guarantee will be forfeited.

15. PROPOSALS OPENING:

The City of Scottsdale reserves the right to request additional or supplemental information or clarifications from proposers, to conduct such investigations as the City considers appropriate with respect to the qualifications and capabilities of any proposer or information contained in any proposal, to reject any or all proposals, to modify or supplement or amend the RFP or the proposal process/schedule, to waive any informality, to negotiate with proposers, to cancel or re-issue the RFP, or advertise for new proposals. Proposals received after the opening date and time will not be accepted and will be returned unopened.

Sealed proposals shall be mailed or hand delivered to Jennifer Lewis, Aviation Planner, Scottsdale Airport, 15000 North Airport Drive, Suite 200, Scottsdale, Arizona 85260. PROPOSALS ARE DUE AND WILL BE OPENED AND ACKNOWLEDGED AS A MATTER OF PUBLIC INFORMATION AT 1:00 PM LOCAL TIME, FRIDAY, JUNE 20, 2006, in the Scottsdale Airport Terminal Building Conference Room, 2nd Floor, 15000 North Airport Drive, Scottsdale, Arizona.

Proposals shall remain in effect until the Lease is authorized by the Scottsdale City Council, executed by the City, and becomes effective, or one-hundred and eighty (180) calendar days after the proposal opening, whichever occurs first.

All proposals must be submitted with this RFP document. A completed entire document and any issued addendums must be signed and returned to constitute an acceptable proposal. The successful proposer will be required to perform all lease obligations whether or not otherwise required by the RFP.

16. PERFORMANCE GUARANTEE:

Prior to commencing construction, the successful proposer shall provide the City with performance bond(s) guaranteeing the faithful performance of the construction obligations of the Lease Agreement. The performance bond(s), which shall be in the amount equal to the cost to construct the proposed facilities and improvements, shall name the City of Scottsdale as beneficiary.

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17. SECURITY DEPOSIT:

Within fifteen (15) days of the City Council's approval of the Lease, Lessee shall provide to City a cash security deposit of One Hundred Thousand Dollars (\$100,000) guaranteeing the faithful performance of the Lease. However, if the proposer fails to develop the parcel substantially in accordance with the proposal submitted within two (2) years of the Lease commencement, the parcel and any constructed elements will revert back to the City of Scottsdale, and the proposer will forfeit the entire One Hundred Thousand Dollar (\$100,000) security deposit.

18. PROPOSAL REQUIREMENTS:

All proposers must submit evidence that they are fully competent to perform the conditions of the Lease and that they have the necessary ability, experience and pecuniary resources to fulfill the conditions and general terms of the Lease. To provide the City of Scottsdale with information on this point, proposers are required to submit, as part of this proposal, information identified in the Proposal Content section later in this RFP together with such additional information as may bear on the proposal evaluation. All of the information submitted by the proposer will be relied upon by the City of Scottsdale in the leasing of land and granting of privileges at the Airport and must be warranted by the proposer as true, accurate, and complete. Failure to disclose adverse circumstances or information about a proposer amounts to a representation that such adverse circumstances or information does not exist.

Failure to submit a completed Proposal Evaluation Sheet together with detailed attachments will be grounds for disqualification of the proposer.

19. PROPOSALS AS PUBLIC RECORDS:

Forms and information submitted in response to this RFP shall become the property of the City and may be subject to disclosure under applicable public records laws. Each proposer shall agree that the proposal submitted shall not be considered confidential and that no information contained therein shall be treated by the City as either confidential, proprietary, or trade secret information. While the City cannot guarantee confidentiality of the financial information, the City will endeavor in good faith to protect the confidentiality of such information and to return said information to the proposer when the Lease is executed. Any such information submitted by the proposer whose proposal is selected will not be returned and will become a public record. Neither party shall be liable for disclosures required by law.

20. ORGANIZATION EMPLOYMENT DISCLAIMER:

Any contract entered into as the result of this RFP will not constitute, create, give rise to or otherwise recognize any partnership, joint venture or other business organization of any kind between the City and the proposer. The rights and obligations of the parties shall only be those expressly set forth in the Lease. The proposer will be required to agree as part of any contract entered into as the result hereof that no person supplied by it in the performance of the contract is an employee of the City, and further agrees that no rights of the City's Retirement or Human Resources benefits rules accrue to any such persons. Any contracting party shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, other benefits and taxes and premiums appurtenant thereto concerning such persons provided by such contractor in the performance of the contract, and shall save and hold the City harmless with respect thereto.

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21. PROPOSAL EVALUATION METHOD:

Proposals will be separated into two categories: (1) aviation oriented and (2) non-aviation oriented. Proposals that include aviation oriented business use of the STP will be reviewed first and given priority consideration over non-aviation oriented business uses. Non-aviation oriented proposals will be considered after a determination has been made regarding the acceptability of aviation oriented proposals. The City reserves the right to select proposals from each category for consideration.

Each category will be assigned points on a comparative basis based on the number of proposers. As an example, if four responsive proposals are received, each proposal will be ranked from best to worst, with the highest ranked proposal receiving 3 points, second highest ranked proposal receiving 2 points, the third ranked proposal receiving 1 point and the last proposal receiving 0 points. In case of a tie in any of the sections, the same point value will be given to the two or more tied proposals. Once the points are determined for each proposal, the weighting criteria will be applied to determine the total points received by the proposer

22. EVALUATION AND SELECTION PROCESS:

The proposals will be considered and evaluated in the following manner:

- A. City staff will review the aviation oriented business proposals, qualification information and other requested materials, and may select a proposal to recommend to the City Council. If there are no acceptable aviation oriented proposals from which to make a selection, then City staff will review the proposals for non-aviation oriented development to determine if any meet the requirements of this RFP. A proposal may then be recommended from either of the categories. In all cases the City reserves the right to reject any and all proposals and is not obligated to select any of the submitted proposals.
- B. Proposers may be requested to submit additional and revised information and materials but may not alter any of the proposals or conditions contained within the submitted proposal.
- C. Proposers may be invited to participate in oral interviews and presentations.
- D. The City Attorney's office will prepare a draft Lease for presentation to the City Council implementing the staff preferred proposal.
- E. The selected proposer shall execute the Lease.
- F. City staff will make a recommendation to the City Council. The City Council will have final authority to select a winning proposal and award or not award the Lease.

23. GROUND FOR DENIAL OR DISQUALIFICATION:

The City may deny or disqualify any proposal for any one or more of the following reasons:

- A. The proposer, for any reason, does not fully meet the qualifications, standards, and requirements established by the City. The burden of proof shall be on the proposer and the standard of proof shall be by clear and convincing evidence.
- B. The proposer's proposed activities and/or improvements will create a safety hazard at or on the Airport.

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- C. The acceptance of the proposal will require the City to expend funds and/or supply labor and/or materials in connection with the proposed activities and/or improvements that the City is unwilling and/or unable to spend and/or will result in a financial loss or hardship to the City.
- D. The proposer has either intentionally or unintentionally misrepresented or omitted a material fact in the proposal or in supporting documentation.
- E. The proposer has failed to make full disclosure in the proposal or in supporting documentation.
- F. The proposer (or an officer, director, agent, representative, shareholder, or employee of proposer) has a record of violating rules or regulations related to the proposer's proposed activity.
- G. The proposer (or an officer, director, agent, representative, shareholder, or employee of proposer) has defaulted in the performance of any lease, sublease, or other agreement at the Airport or at any other airport.
- H. The proposer does not exhibit adequate financial responsibility or capability to undertake the proposed activity.
- I. The proposer cannot provide a performance bond or applicable insurance in the type and amounts required by the City for the proposed activity.
- J. The proposer (or an officer or director of proposer) has been convicted of a felony or a crime of moral turpitude.
- K. The proposer seeks terms and conditions which are inconsistent with City policies and values, the RFP, or the best interest of the City.
- L. The proposer did not include aviation oriented use in its proposal and a qualifying aviation-oriented business use was proposed.

24. SHORT LIST:

The City reserves the right to develop a short list of proposers. The City may invite short listed proposers to present their project concepts to the City's RFP selection team prior to announcing the final selection.

25. PROJECTED SCHEDULE:

The projected schedule for the selection process is as follows (subject to change):

April 26, 2006	RFP announced and available for distribution
May 11, 2006	Pre-proposal Conference at 2:00 p.m.*
May 24, 2006	Deadline for questions (must be provided in writing) by 4 p.m.*
June 20, 2006	Proposals are due by 1:00 p.m.*
June 30, 2006	Tentative Selection Announced
July 12, 2006	Tentative Proposal to Airport Advisory Commission
August 28, 2006	Tentative Proposal to City Council

* Times are noted in local time.

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26. PROPOSER INSTRUCTIONS:

The proposer must fully respond to the specifications in all sections. The proposal must meet or exceed the minimum requirements stated. The proposer should clearly state whether or not the specification can be met. If the specification can be met, an explanation of the methods or strategies used is required. If the specification cannot be met, the proposer should explain why it cannot or should not be met. The exception must be carefully detailed so as to allow full evaluation of the exception.

Proposals must be organized in the same sequence as the RFP, although explicit cross-references may be made to additional or appendix material. Proposals should be specific and complete in every detail, prepared in a readable and straight-forward manner. Proposers must answer all questions completely and accurately, and furnish all required information/documents – failure to do so may result in disqualification.

Proposers are expected to identify their best, most cost-effective development solutions that meet the needs of the Airport. When possible, proposers are encouraged to submit multiple development solutions with conceptual design and associated costs that reflect and compare different solution strategies.

Proposals must be typewritten or word processed using at least 10-point font on standard 8 ½" by 11" paper. Proposals must be bound on the left long side. The original proposal must be three-ring bound.

27. PROPOSAL CONTENT:

Each proposer must complete the following information and attach all required information and/or documentation as follows:

- A. Cover Letter identifying the proposing entity(ies) and the name of the proposed business, if different. An authorized representative of the proposing entity must sign the cover letter.
- B. Table of Contents outline the contents of the proposal.
- C. Executive Summary summarizing the key elements of the proposal. In addition, the Executive Summary should include a statement that explains why the proposer needs the site, is qualified to develop, operate and manage the site, and why the proposer would be the best selection.
- D. Organizational Structure. (Weight: 5).
 - 1. Provide a copy of the proposer's Articles of Incorporation, bylaws or other written rules of organization.
 - 2. Provide a chart depicting the proposer's organizational structure.
 - 3. Provide a written description of the practical, as well as the legal, ownership of the proposer and the persons who will have practical control over the proposer.

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E. Qualifications of Proposer. (Weight: 10).

1. Describe in detail your experience in parcel development, particularly with the project you are proposing. Include resumes and other background information on the principals and management of the entity submitting this proposal.
2. Provide written evidence that the proposer has assembled a management team and employees who are committed (prior to approval of the Lease) to construct an appropriate structure, and manage and operate the business conducted at the premises pursuant to the Lease.
3. Identify three (3) entities who can verify proposer's experience, qualifications, and capabilities to develop, operate, manage and market a development similar to the one being proposed. Contact information should include contact name and title, complete mailing address, telephone, fax and email address.
4. Identify by date, parties and subject matter of each contract, lease, or other agreement existing within the past five years between the City, on one hand, and the proposer and/or its principals, owners, or members of its management team, on the other hand.

F. Proposed Development Plan. (Weight: 20).

1. Provide a conceptual project narrative for the proposed facilities, improvements and associated amenities.
2. Provide preliminary concept illustrations.
3. Provide a preliminary cost estimate to develop and construct the proposed project.
4. Provide an anticipated project schedule.
5. Provide a description of the proposed project's contribution to the City of Scottsdale.

G. Proposed Rent. (Weight: 15). Propose a rent structure, payable monthly or in some other incremental time period, which will provide the City of Scottsdale with an annual net income for the STP that equates to a value of \$3.00 per square foot per year.

H. Financial Status of Proposer. (Weight: 5).

1. Provide written evidence of proposer's ability to obtain a performance bond.
2. Provide a written statement of financial responsibility from a qualified financial institution or from such other source as may be readily verified through normal channels.
3. Provide proposer's annual financial statement prepared by a Certified Public Accountant for a three (3) year period.
4. Provide proposer's current balance sheet.

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5. Provide bank references including detailed contact information (complete name and title, mailing address, telephone, fax and email address).
6. Submit written evidence that the proposer actually owns or has other legal access to all cash, equipment and other working capital necessary to conduct the business on an on-going basis.
7. Submit written evidence that the proposer has been adequately capitalized to operate the premises, meet its long term obligations according to business plans submitted, pay its rent and fund all other obligations under the lease, and possesses sufficient financial strength to successfully operate the business.

I. Marketing Plan. (Weight: 5).

1. Describe the proposer's target market(s) and the marketing and sales strategy (including the promotional methods and mix) that will be utilized to reach the target market(s).
2. Describe the proposer's pricing strategies, image development (and/or enhancement) program(s), and the process(es) that will be utilized to evaluate the effectiveness of the proposer's marketing and image development programs.
3. Describe the proposer's experience, if any, in promoting aviation products, services, and facilities as well as the proposer's experience in raising the visibility and attractiveness of an airport.
4. Provide an overview of the proposer's experience championing issues that provide for positive exposure, growth, and development of a similar project.
5. Provide a detailed marketing budget.

The weighting (or value associated with) each of the preceding areas has been provided to give proposers an idea of the relative importance of each element to the City.

J. Proposer Information.

1. Date submitted: _____
2. Submitted by (name and address as it would appear in the Lease Agreement):

_____ LEGAL NAME
_____ BUSINESS NAME
_____ ADDRESS
_____ ADDRESS
_____ CITY, STATE, ZIP

3. CHECK ONE: ☐ Sole Proprietor ☐ Corporation ☐
Limited Liability Company ☐ General Partnership ☐ Limited
Partnership ☐ Other _____

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4. Principal office contact information:

_____ CONTACT PERSON
_____ ADDRESS
_____ ADDRESS
_____ CITY, STATE, ZIP
_____ TELEPHONE _____ FAX
_____ E-MAIL ADDRESS
_____ WEBSITE ADDRESS

5. Official representative contact information:

_____ NAME
_____ TITLE
_____ TELEPHONE _____ FAX
_____ E-MAIL ADDRESS

6. Legal Statements

Please answer the following questions as they may apply to proposer (including sole proprietors, partners and/or members (individually or collectively) of a partnership or limited liability company, or director, officer, or shareholder of a corporation).

- a. Has the Proposer ever been convicted of a felony?
☐ NO ☐ YES (If yes, please give date, place, and nature of conviction on a separate sheet identified as paragraph G7a.)
- b. Has the Proposer ever been convicted of a crime of moral turpitude?
☐ NO ☐ YES (If yes, please give date, place, and nature of conviction on a separate sheet identified as paragraph G7b.)
- c. Does the Proposer have any judgment (rendered in a court of law) outstanding against them?
☐ NO ☐ YES (If yes, please give the date, place, and nature of judgment on a separate sheet identified as paragraph G7c.)
- d. Has the Proposer declared bankruptcy within the last 10 years?
☐ NO ☐ YES (If yes, please give the date, place, and nature of proceeding on a separate sheet identified as paragraph G7d.)
- e. Has any lease, use, or operating agreement for any business enterprises held by proposer ever been canceled or placed in default?
☐ NO ☐ YES (If yes, please give the date, place, and nature of the cancellation or default on a separate sheet identified as paragraph G7e.)

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f. Has any lease, use, or operating agreement held by the proposer ever been canceled or placed in default?

☐ NO ☐ YES (If yes, please give the date, place, and nature of the cancellation or default on a separate sheet identified as paragraph G7f.)

g. Is there any member of the City, its staff or employees, or families who has any direct or indirect financial interest in the proposing entity?

☐ NO ☐ YES (If yes, please give name(s) of such individual(s), and describe the relationship on a separate sheet identified as paragraph G7g)

h. If proposer is owned or licensed by another person, partnership, corporation, or limited liability corporation (or if Proposer does business under another name), provide the name of that entity: _____

K. Proposal Statement.

STATE OF ARIZONA

CITY OF SCOTTSDALE

For himself or herself personally, and for the entity submitting this proposal, the person who signs this affidavit certifies to the City of Scottsdale all of the following:

1. This affidavit and the proposal incorporate by reference, as if fully set forth in this proposal, the full content of the RFP.
2. The entity submitting the proposal and I have read and understand all of the provisions set for the RFP.
3. The proposal meets or exceeds the specifications contained in the RFP.
4. We have received the listed addenda to the RFP and understand that they are part of the RFP.

Addendum # _____

Dated: _____

Addendum # _____

Dated: _____

Addendum # _____

Dated: _____

Addendum # _____

Dated: _____

RFP, SOUTH THUNDERBIRD PARCEL

5. All information requested by the City has been submitted and is true, accurate, and complete.
6. I am duly authorized to execute a Lease Agreement in the form specified by the RFP.
7. None of the contents of the proposal have been communicated by me or the entity submitting the proposal, or to the best of our knowledge, by anyone else to the City. No such communication shall occur prior to the official opening of the proposals.
8. If our proposal is selected, we will immediately enter into the lease agreement and commence to fully perform thereunder.
9. The proposal is genuine and not a sham or collusive.
10. The proposal was not made in the interest or behalf of any person, partnership, company, association, organization, or corporation not herein so identified.
11. Neither the proposer nor any of proposer's officers, partners, owners, shareholders, agents, representatives, employees, or parties in interest, has in any way colluded, conspired or agreed, directly or indirectly, with any person, firm, corporation or other proposer or potential proposer in regard to the amount, terms, or conditions of this Invitation for Proposal and has not paid or agreed to pay, directly or indirectly, any person, partnership, company, association, organization, corporation or other proposer or potential proposer any money or other valuable consideration for assistance in procuring or attempting to procure the Agreement or fix the prices in the attached proposal or the proposal of any other proposer, and hereby states that no such money or other reward will be hereinafter paid.
12. Beginning on the date the RFP was issued, we have neither recommended nor suggested to the City, or any of its officers, agents, representatives or employees, any of the terms or provisions set forth in the proposal or the Agreement, except at a meeting open to all interested proposers, of which proper notice was given.
13. Unless we inform you in writing prior to the proposal opening, this affidavit shall be effective and deemed repeated as of the date the proposal is submitted, as of the date proposals are opened, and as of the date the agreement is executed.

Proposed Business Typed Name

By: _____

Authorized Agent Signature

Authorized Agent Typed Name

Authorized Agent Typed Title

RFP, SOUTH THUNDERBIRD PARCEL

STATE OF ARIZONA)
County of Maricopa) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, _____ of _____ a _____.

Notary Public

My Commission Expires:

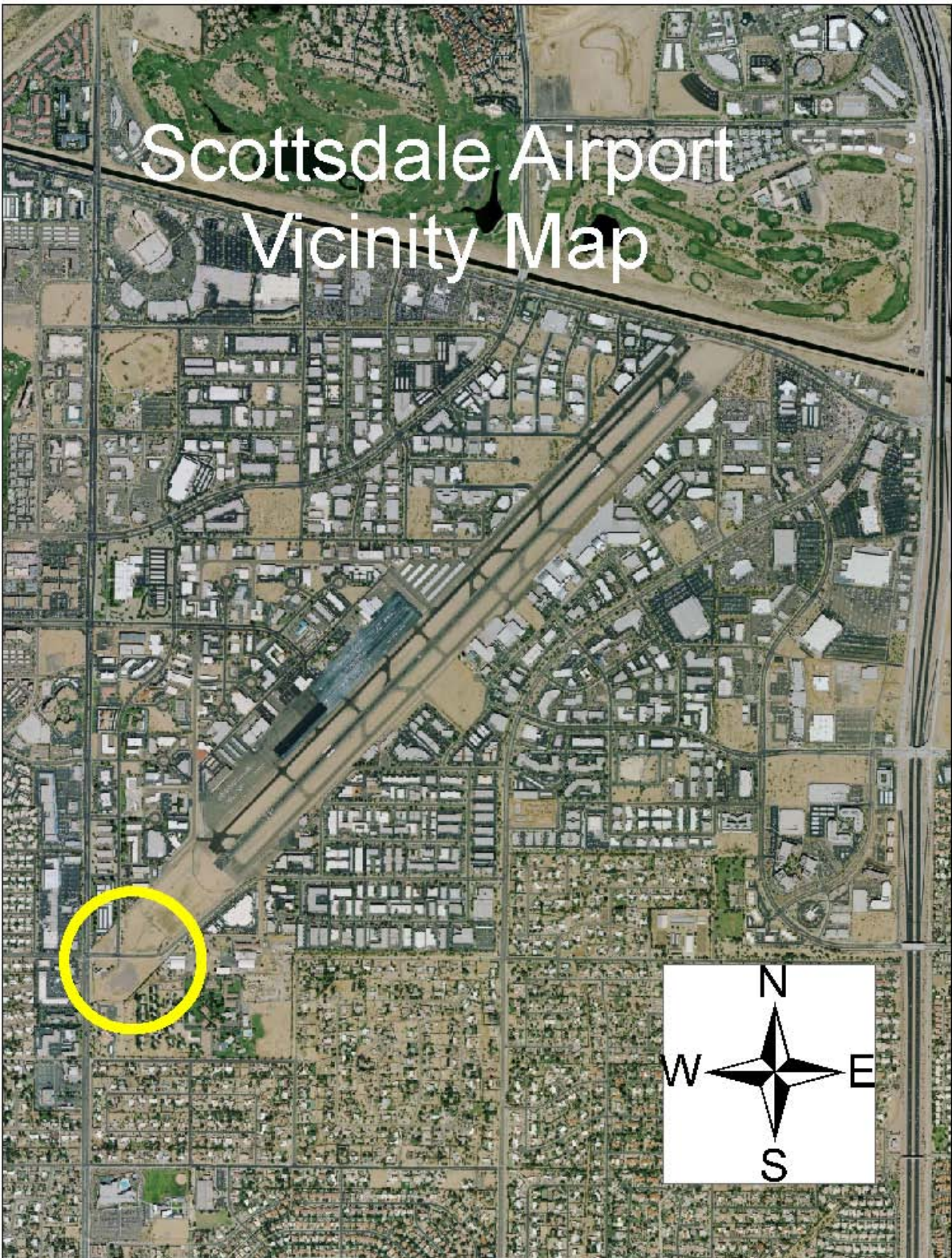


EXHIBIT "A" – Airport Vicinity Map

RFP, SOUTH THUNDERBIRD PARCEL



RFP, SOUTH THUNDERBIRD PARCEL

WHEN RECORDED RETURN TO:

(Scott Gray)
ONE STOP SHOP/RECORDS
CITY OF SCOTTSDALE
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

City of Scottsdale Contract No. 2006-_____-COS
(Southeast corner Thunderbird and Scottsdale)

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2006, by and between the City of Scottsdale, an Arizona municipal corporation ("Lessor"), and _____, a _____ ("Lessee").

RECITALS

A. Lessor is the owner of the Scottsdale Airport (the "Airport") located northeast of the intersection of Scottsdale Road and Thunderbird Road in Maricopa County, Arizona.

B. Lessor holds fee title and various other interests in the Airport pursuant to various documents (the "Site Documents").

C. The Airport includes certain real property (the "Premises") comprising approximately Eight and Three-Quarters (8.75) acres. The Premises are located at the Southeast corner of Scottsdale Road and Thunderbird Road in the City of Scottsdale, Arizona, and more particularly described on Exhibit "A" attached hereto.

D. As of the date of this Agreement, the Premises are improved with an old fire station.

E. Lessee desires to remove the old fire station and construct and operate all improvements necessary for convenient use of the Premises as a _____ (collectively the "Project") upon the Premises as depicted on the drawing (the "Site Plan") attached hereto as Exhibit "B", subject to the requirements of this Agreement.

F. Subject to the terms and conditions of this Agreement, Lessee shall construct the various improvements comprising the Project upon and adjacent to the Premises as depicted on the Site Plan.

G. Lessee shall complete the Project no later than the second annual anniversary of this Agreement (the "Completion Deadline").

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Lessee, and the covenants and agreements contained herein to be kept and performed by Lessee, and other good and valuable consideration, Lessor and Lessee agree as follows:

2545196v3
CR 04/12/06 E 04/26/06 M _____

I. PREMISES

1 Premises. Lessee's rights to use the Premises are limited as follows:

1.1 Reservation. Lessor specifically reserves to itself and excludes from this Agreement a non-exclusive easement (the "Reserved Easement") over the entire Premises for the exercise of all of Lessor's rights under this Agreement and for any and all purposes that do not in Lessor's reasonable discretion materially interfere with Lessee's lawful conduct of the Permitted Uses under this Agreement. The Reserved Easement does not give the general public a right to enter upon the Premises. Without limitation, the Reserved Easement also includes:

1.1.1 An underground utility easement.

1.1.2 A non-exclusive easement for pedestrian and vehicular access upon all vehicular, and pedestrian driveways, plazas, sidewalks, and maneuvering areas shown on the Site Plan or otherwise existing from time to time.

1.1.3 The delegable right to install and operate antennas upon the roofs of the buildings. Lessee shall have the right to reject antennas which are visible from the parking spaces within the Premises or which interfere with other permitted uses of the roofs by Lessee and cannot be reasonably accommodated by such uses.

1.2 Public Agency Access. Lessor reserves the right for other public agencies to enter the Premises or any part thereof at all reasonable times, for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located within or without the Premises. Any such entry shall be made only after reasonable notice to Lessee, and after the other public agency has agreed to be responsible for any claims or liabilities pertaining to any entry. Any damage or injury to the Premises resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry. Such reserved rights do not include the interior space of any buildings that Lessee may construct upon the Premises. The other public agency shall take commercially reasonable steps to minimize any disruption of the conduct of business on the Premises caused by the construction, reconstruction, repair, operation, maintenance and replacement of such improvements and facilities.

1.3 Rights in Adjacent Premises. This Agreement excludes any land dedicated or used for public street right-of-way. Lessee's rights are expressly limited to the real property defined as the "Premises" in this Agreement. Without limitation, in the event any public right-of-way or other public or private property adjacent to the Premises is owned, dedicated, abandoned or otherwise acquired, used, improved or disposed of by Lessor, such property shall not accrue to this Agreement but shall be Lessor's only. In addition, and severable from the preceding sentence, upon any such event, Lessee shall execute and deliver to Lessor without compensation a quit-claim deed of such right-of-way or other property.

1.4 Variation in Area. In the event the Premises consist of more or less than any stated acreage, this Agreement shall nevertheless continue and Lessee's obligations hereunder shall not be increased or diminished.

RFP, SOUTH THUNDERBIRD PARCEL

1.5 Condition of Title. Lessee's rights hereunder are subject to all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded or unrecorded conditions of title to, the Premises. Lessee has obtained any title insurance or information Lessee deems appropriate. Lessor does not warrant its own or Lessee's title to the Premises. Lessee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Premises or Lessee's use thereof.

1.6 Site Documents. Lessee shall do nothing at the Premises that the Site Documents would not allow Lessor to do. The Site Documents are such documents affecting the Premises as are recorded in the office of the Maricopa County Recorder as of the date of this Agreement. Lessee warrants and represents that Lessee does not know of any unrecorded documents affecting title to the Premises. Lessee shall timely, fully and faithfully perform all obligations of Lessor and Lessee under the Site Documents with respect to the Premises. Lessee shall not have power to amend, modify, terminate or otherwise change the Site Documents. Lessee shall pay, indemnify, defend and hold harmless Lessor and its agents and representatives of, from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators' and experts' fees and court costs, which arise from or relate to violations of the Site Documents by Lessee or those claiming through Lessee. In the event the Site Documents impose affirmative duties to be performed on land outside the Premises, Lessee is not obligated to perform such duties unless the Site Documents specifically impose such duties upon the land included within the Premises.

1.7 Condition of Premises. Lessee has examined, studied and inspected the Premises, the Airport, and all other property associated with this Agreement and its environs. All of such property is being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Lessee has obtained such information and professional advice as Lessee has determined to be necessary related to this Agreement or this transaction.

1.8 Lessor's Fixtures and Personalty. No fixtures or personal property owned by Lessor upon or within the Premises are included in this Agreement. Any and all of Lessor's property as may come into the possession of Lessee or be used by Lessee, shall be returned to Lessor by Lessee at termination of this Agreement and shall be maintained in good working condition by Lessee from time to time at Lessee's expense and replaced by Lessee at Lessee's expense when worn out and shall be owned at all times by Lessor with Lessee being solely responsible for the condition thereof. All such personal property shall be provided "as is" and Lessee shall accept all responsibility for its condition and shall thoroughly inspect the same before use.

II. TERM OF AGREEMENT

2 Term of Agreement. Lessor hereby leases the Premises to Lessee subject to and conditioned upon Lessee's full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Lessee, and Lessee hereby accepts the Premises and this Agreement.

RFP, SOUTH THUNDERBIRD PARCEL

2.1 Term. The term of this Agreement shall be for a period of twenty (20) years commencing on the date of this Agreement unless sooner terminated as set forth in this Agreement.

2.2 Extension. In the event of Lessee's continuously full, complete and timely performance of this Agreement throughout the initial term set forth above and any extension (disregarding nonperformance cured within any cure period specified by this Agreement), this Agreement may be extended at Lessee's option for two (2) additional ten (10) year periods as follows:

2.2.1 In order to exercise its options to extend, Lessee must give to Lessor written notice of Lessee's intent to extend no earlier than twelve (12) months and no later than six (6) months prior to expiration of the initial term (or, in the case of the second extension, the first extension).

2.2.2 In the event of extension, Lessee shall obtain from Lessor and record a notice of extension in form reasonably acceptable to Lessor.

2.3 Holding Over. In any circumstance whereby Lessee would remain in possession of the Premises after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a tenancy from month to month which may be terminated at any time by Lessor upon thirty (30) days notice to Lessee, or by Lessee upon sixty (60) days notice to Lessor.

[Note: The next paragraph will be included only if the lease is for an aviation use.]

2.4 Airport Closure. Lessor does not warrant that the Airport will remain open during the entire term of this Agreement, but Lessor does not presently have intentions to close the Airport. If the Airport is closed for more than a twelve (12) month period, Lessee shall have a twelve (12) month period (the "Decision Period") to give Lessor notice that Lessee elects to terminate this Agreement without penalty. The Decision Period shall commence on the date (the "Determination Date") which is the end of the said first twelve (12) month period of Airport closure. If Lessee does not so elect to terminate this Agreement by giving such notice then the following shall apply:

2.4.1 The Permitted Uses shall be expanded to include all uses then allowed under applicable zoning and other laws.

2.4.2 Lessee may elect by notice to Lessor during the Decision Period to extend this Agreement for an additional ten (10) year period.

III. LEASE PAYMENTS

3 Lease Payments. Lessee shall pay to Lessor all of the following payments together with all other payments required by this Agreement (all payments by Lessee to Lessor required by this Agreement for any reason are collectively the "Rent"):

3.1 Rent Payment Date. All Rent shall be payable one month in advance on the twentieth day of the preceding month. In the event an amount is not known in advance, Lessor shall have the right to estimate the amount, with an adjustment to be made within sixty (60) days after the actual amount becomes known. For example, the Rent for September shall be payable on or before August 20. Rent is deemed paid only when good payment is actually received by Lessor.

3.2 Base Rent. The rental amount (the "Base Rent") Lessee shall pay to Lessor at the beginning of each month of this Agreement shall be _____ (\$_____).

3.3 Biannual Base Rent Adjustment. The Base Rent shall be automatically adjusted upward on each annual anniversary of this Agreement occurring in an even numbered calendar year. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The amount of each adjusted monthly installment of Base Rent (represented by the letter "R" in the formula set forth below) shall be equal to the then current Cost of Living Index number as of the date two (2) months prior to adjustment date (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number for the month during which this Agreement commences (represented by the letter "M" in the formula set forth below), and multiplied by the original monthly Base Rent amount (represented by the "\$" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = \frac{C}{M} \times \$$$

provided, that in no event shall any Rent be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, Lessor shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate. Any correction due to an error in Lessor's estimate shall be paid by Lessee to Lessor (or by Lessor to Lessee, as the case may be) within thirty (30) days after notice by either party to the other that the Cost of Living Index has been published. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, then an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by Lessor in Lessor's reasonable discretion. Any delayed adjustment shall be effective retroactively. In the event of a holdover, all Rent and every element thereof shall be increased by an additional fifty percent (50%) over the amount of Rent that would otherwise be payable under this Agreement.

RFP, SOUTH THUNDERBIRD PARCEL

3.4 Base Rent Delay Period. Notwithstanding anything contained herein to the contrary, Base Rent shall not begin to accrue until the earlier of i) the Completion Deadline; ii) substantial completion of the Project; or iii) the date at which Lessee becomes in default under this Agreement. Base rent for the remainder of the month in which such event occurs shall be prorated on the basis of a thirty (30) day month.

3.5 Aeronautical Business Permit. To the extent required by law, all persons occupying or operating at the Premises shall obtain an Aeronautical Business Permit. This paragraph applies to any type of permit or other rule or requirement that may supplement or replace the Aeronautical Business Permit. In addition to all other Rent payment hereunder, if Lessee does not from time to time hold an Aeronautical Business Permit covering all activities relating to its own operations, activity and business at the Premises and pay all fees related thereto, Rent shall include an additional amount equal to the amount that would be payable pursuant to such an Aeronautical Business Permit regardless of whether an Aeronautical Business Permit is required by law.

3.6 Security Deposit. Upon execution of this Agreement, Lessee shall provide to Lessor, and maintain with Lessor at all times during the term of this Agreement, a cash security deposit in the amount equal to One-Hundred Thousand Dollars (\$100,000.00) guaranteeing the faithful performance of this Agreement. Any funds or property of Lessee held by or available to Lessor or any issuer of a letter of credit, receiver, escrow agent or other third party under or related to this Agreement shall also stand as a security deposit guaranteeing Lessee's faithful performance of this Agreement. Any portion of any security deposit to which Lessee may then be entitled, net of any setoff or other obligation of Lessee, shall be paid to Lessee by the then owner of the fee title to the Premises within sixty (60) days after the later of termination of this Agreement or complete satisfaction of all of Lessee's obligations.

3.7 Late Fees. Should any Rent not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100). Furthermore, any Rent that is not timely paid shall accrue interest at the rate of one percent (1%) per month from the date the amount first came due until paid. Lessee expressly agrees that the foregoing represent fair and reasonable estimates by Lessor and Lessee of Lessor's costs (such as accounting and processing costs, administrative costs, etc.) in the event of a delay in payment of Rent. Lessor shall have the right to allocate payments received from Lessee among Lessee's obligations.

3.8 Rent Amounts Cumulative. All amounts payable by Lessee under any provision of this Agreement or under any tax, assessment or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

3.9 No Setoffs. Lessee shall pay all Rent directly to Lessor without setoff or deduction of any description. Lessee expressly waives any right of setoff.

IV. USE RESTRICTIONS

4 Use Restrictions. Lessee's use and occupation of the Premises shall in all respects conform to all and each of the following cumulative provisions:

4.1 Permitted Uses. Lessee and those claiming through Lessee shall use the Premises solely for a _____ (the "Permitted Uses"). Lessee shall conduct no other activity at or from the Premises. The Permitted Uses are limited to the following

4.1.1 _____.

4.1.2 _____.

4.1.3 _____.

4.1.4 _____.

4.1.5 _____.

4.1.6 _____.

4.1.7 _____.

4.1.8 _____.

4.1.9 _____.

4.1.10 _____.

4.1.11 _____.

4.1.12 Such other _____ related uses to which Lessor may give or retract consent from time to time. Such uses may only be conducted following Lessor's giving to Lessee notice of such consent. Lessor may impose conditions and limitations on such consent.

4.2 Additional Restrictions. The Permitted Uses are further restricted as follows:

4.2.1 _____.

4.2.2 No gambling activities of any sort whatsoever are permitted at the Premises.

4.2.3 Sales, sale signs, and merchandise storage and display are confined to the interior of the Premises within the building.

RFP, SOUTH THUNDERBIRD PARCEL

4.3 Height Limitation. Lessee shall not direct, permit, or maintain upon the Premises any structure, tree, or other stationary or attached object that penetrates the Federal Aviation Regulation Part 77 surface without consent of Lessor and the Federal Aviation Administration.

4.4 Signs. Lessee shall install all signs and markings required for safe use of the Premises. Lessee shall have the right to install and maintain not more than two (2) appropriate exterior signs to identify Lessee's operations at the Premises provided that all of the following conditions are met:

4.4.1 Lessee shall design, make, install and maintain all signage in a first class professional manner.

4.4.2 Lessee shall not erect, install, apply for a permit for, or display any sign until Lessee has submitted written request, together with descriptions and drawings showing the intended locations, size, style and colors of such signs to Lessor, and has received notice of Lessor's approval. Proposed Lessee signs shall also be subject to the same plans review and other requirements that apply to other construction work by Lessee under this Agreement.

4.4.3 Lessee shall bear all costs pertaining to the erection, installation, operation, maintenance and removal of all signs including, but not limited to, the application for and obtaining of any required building or other permits.

4.4.4 The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, banners and other manner of signage.

4.4.5 Lessee shall provide signage and other markings on the Premises as directed by Lessor from time to time to cause parking, deliveries and other vehicle and other uses to comply with this Agreement.

4.5 Publicity. Upon special or standing requests made by Lessor from time to time and not in the absence of such requests, Lessee shall include in its promotional materials and other information distributed, sent, or made available to the public or others a notation that all or any part of Lessee's activities at the Premises are accomplished "with the assistance of the City of Scottsdale" or other words of support as Lessor may reasonably select from time to time.

4.6 Prohibited Names. Lessee shall not allow use in connection with any operations at the Premises any name that directly or indirectly refers to or contains any part of Lessor's name or the Airport's name or otherwise suggests a connection between Lessor and Lessee or Lessee's activities.

4.7 Nonexclusive Uses. Lessee understands and agrees that Lessor, Lessor's other tenants, and other persons within and without the Airport and the surrounding vicinity will conduct from time to time business activities in direct competition with Lessee. Lessee has no exclusive rights to conduct any activity anywhere at the Airport. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958(49 U.S.C. 1349).

RFP, SOUTH THUNDERBIRD PARCEL

4.8 Communications Operations Restriction. Lessee shall not install, operate, or allow the use of equipment, methodology or technology that may or would interfere with the optimum effective use or operation of Lessor's existing or future fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Lessee shall immediately discontinue using the equipment, methodology or technology that causes the interference until Lessee takes corrective measures. Any such corrective measures shall be made at no cost to Lessor.

4.9 Outdoor Uses. Except to the extent, if any, approved by Lessor in writing in advance from time to time, all uses other than automobile parking, pedestrian and vehicular access, and similar incidental uses are confined to the interior of buildings at the Premises.

4.10 Coordination Meetings. Lessee shall meet with Lessor and other Airport users from time to time as requested by Lessor to coordinate and plan construction and operation of the Premises and all matters affected by this Agreement.

4.11 Governmental Relations. Lessee shall conduct its activities in coordination with Lessor as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Premises. The preceding sentence does not prohibit Lessee from asserting its legal rights against such entities. Lessee shall immediately give to Lessor notice of any actual or threatened dispute, violation or other disagreement relating to the Premises. Lessee is not an agent for Lessor. Without limitation, such entities (who are not third party beneficiaries to this Agreement) include (to the extent that such entities have jurisdiction over the Premises or the Airport):

4.11.1 State of Arizona

4.11.2 Maricopa County

4.11.3 Arizona Department of Environmental Quality

4.11.4 Arizona Department of Transportation

4.11.5 Federal Aviation Administration

4.11.6 Federal Environmental Protection Agency

4.12 Conduct at Premises. In entering into this Agreement, Lessor and Lessee have foremost in mind providing the public with a professional and family atmosphere devoid of unruly, inebriated, disorderly, or sexually oriented behavior. Lessee shall cause persons exhibiting such behavior to leave the Premises.

4.13 Quality Service. Lessee shall operate the Premises in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the Premises attractively maintained, orderly, clean, sanitary and in an inviting condition at all times, all to Lessor's reasonable satisfaction.

RFP, SOUTH THUNDERBIRD PARCEL

4.14 Lessee's Agent. Lessee shall at all times when the Premises are occupied retain on call available to Lessor upon the Premises an active, Qualified, competent and experienced manager to supervise all activities upon and operation of the Premises and who shall be authorized to represent and act for Lessee in matters pertaining to all emergencies and the day-to-day operation of the Premises and other matters affecting this Agreement. Lessee shall also provide notice to Lessor of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person to handle Lessee's affairs and emergencies at the Premises.

4.15 Operations and Staff Qualifications and Requirements. Lessee shall provide to the Premises adequate Qualified personnel to conveniently conduct all operations at the Premises.

4.16 Hazardous Materials. Lessee's use upon or about the Premises shall be subject to the following provisions regarding any hazardous waste or materials or toxic substance or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"):

4.16.1 Lessee shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Premises. The prohibitions of the preceding sentence only shall not apply to:

[Note: These blank paragraphs will be filled in (or will be deleted) based on the winning bidder's use.]

4.16.1.1 _____ lawfully contained in proper tanks and dispensing offered for sale as permitted by this Agreement.

4.16.1.2 _____, provided such materials are present only in the minimum quantities reasonably necessary for such uses.

4.16.1.3 Janitorial supplies and similar materials in the minimum quantities necessary for first class modern uses permitted by this Agreement.

4.16.1.4 Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction or landscaping machinery serving the Premises when such materials are properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles installed in such vehicles and machinery.

4.16.2 Lessee shall dispose of any Toxic Materials away from the Premises as required by law and as reasonably required by Lessor.

4.16.3 Lessee shall not use the Premises in a manner inconsistent with regulations issued by the Arizona Department of Health Services.

RFP, SOUTH THUNDERBIRD PARCEL

4.16.4 In addition to any other indemnities or obligations, Lessee shall pay, indemnify, defend and hold Lessor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Premises attributable to or caused by Lessee or anyone using the Premises or acting or claiming under Lessee or this Agreement or otherwise relating to this Agreement. Lessee shall immediately notify Lessor of any prohibited Toxic Substance at any time discovered or existing upon the Premises.

4.16.5 Lessee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Lessee acknowledges the possibility that the Premises may contain actual or presumed asbestos containing materials.

4.17 Chemical Containers. Lessee shall capture, control and dispose of waste oil and other waste materials from equipment and other activities at the Premises. Lessee's disposal of such items shall be according to law and away from the Premises and other property of Lessor.

4.18 Fixtures and Personalty. Lessee shall from time to time commencing with the Completion Deadline provide to and maintain at the Premises all equipment and other items necessary for the Premises to be conveniently used for the Permitted Uses.

4.19 Required Operation. During the entire term of this Agreement and any renewals or extensions, Lessee shall keep the Premises open to the public with service adequate to meet public demand during the hours of _____ to _____, not less than _____ (_____) days a week, weekends and Arizona State holidays excepted. If Lessor determines in Lessor's reasonable discretion that public demand requires additional operating hours, Lessor shall have the right to require additional hours of operation. Notwithstanding anything contained in this paragraph to the contrary, the operation requirements of this paragraph shall be effective commencing on the Completion Deadline and shall continue through the date this Agreement terminates or expires for any reason. The operating requirements of this paragraph shall be suspended during the allowed period of repair work to the Premises under this Agreement when and to the extent operation is prevented by damage to the Premises. During the required hours of operations, Lessee shall provide all of the following services:

4.19.1 _____.

4.19.2 _____.

4.19.3 _____.

4.20 Parking off the Premises. Lessor is not required to provide any parking. Parking is allowed only in marked parking stalls on the Premises. Vehicle loading, unloading, parking and standing is not allowed on any other area of the Airport or upon adjacent streets or lands.

4.21 Parking on the Premises. To reduce effects on surrounding parking, and to encourage full use of parking at the Premises by persons visiting the Premises, Lessee shall make no charge for parking at the Premises. Except as Lessor may consent from time to time, Lessee shall provide all parking on site in compliance with current and future laws and regulations.

RFP, SOUTH THUNDERBIRD PARCEL

4.22 Airport Operations. Lessee acknowledges that Lessee's use of the Premises shall be subject and subordinate to Lessor's operation of the Airport, which will necessarily directly and indirectly affect Lessee and the Premises. Lessee shall not use the Premises in a way that in Lessor's reasonable discretion adversely affects Lessor's use or operation of the Airport. Cumulatively and without limitation:

4.22.1 This Agreement does not give Lessee any rights to park aircraft at any location at the Airport (other than the Premises, if such use is otherwise specifically allowed by this Agreement) or to use any other portion of the Airport. Any use of any portion of the Airport other than the Premises by Lessee shall be only as a member of the public and subject to all rules and regulations affecting the Airport from time to time.

4.22.2 Lessor reserves the right to further develop, diminish, close, remove or otherwise change the landing area and other areas of the Airport. Lessor reserves the right, but shall not be obligated to Lessee to maintain, operate or repair the landing or other areas of the Airport and all publicly-owned facilities of the Airport.

4.22.3 There is hereby reserved to Lessor, its successors and assigns, and for the use and benefit of Lessor and the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This right of flight shall include the right to cause within or without said airspace any noise, vibrations or other effects relating to the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operating at, the Airport.

4.22.4 Lessee shall not interfere with or endanger or obstruct the flight, taxiing, landing and taking off of aircraft, the loading or unloading of passengers or cargo, or other Airport operations.

4.23 Actions by Others. Lessee shall be responsible to ensure compliance with this Agreement by all persons using the Premises or claiming through or under Lessee or this Agreement. Lessee shall prevent all such persons from doing anything that this Agreement prohibits Lessee from doing.

V. IMPROVEMENTS BY LESSOR

5 Improvements by Lessor. Lessor has not promised to and is not obligated in any manner to make any improvements to the Premises or the Airport or to nearby lands.

VI. LESSEE'S IMPROVEMENTS GENERALLY

6 Lessee's Improvements Generally. Lessee shall not perform any improvements, repairs, installation, construction, grading, structural alterations, utility alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description whether or not specifically described herein upon or related to the Premises (collectively "Lessee's Improvements") except in compliance with the following:

6.1 Cost of Lessee Improvements. All Lessee's Improvements shall be designed and constructed by Lessee at Lessee's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall Lessor be obligated to compensate Lessee in any manner for any of Lessee's Improvements or other work provided by Lessee during or related to this Agreement. Lessee shall timely pay for all labor, materials, work and all professional and other services related thereto and shall pay, indemnify, defend and hold harmless Lessor and Lessor's employees, officer's, contractors and agents against all claims related thereto. Lessee shall bear the cost of all work required from time to time to cause the Premises to comply with local zoning rules, the Americans with Disabilities Act, building codes and similar rules. Lessee shall also bear the cost of all work required from time to time to cause any other property owned by Lessor to comply with all such rules implicated by work performed by Lessee, by Lessee's use of the Premises, or by any exercise of the rights granted to Lessee under this Agreement.

6.2 Improvement Quality. Any and all work performed on the Premises by Lessee shall be performed in a workman-like manner as reasonably determined by Lessor and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Lessee's Improvements shall be high quality, safe, modern in design, and attractive in appearance, all as approved by Lessor through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply.

6.3 Ownership of Lessee's Improvements. All Lessee's Improvements shall be and become part of the real property of Lessor brick-by-brick as constructed or installed. Notwithstanding Lessor's ownership of the land and improvements, during the term of this Agreement Lessee and its permitted sublessees and other permitted successors and assignees shall have the right to occupy and use the land and improvements as set forth in this Agreement, including the right to impose liens upon Lessee's leasehold interest to the extent permitted by this Agreement.

6.4 Time for Completion. Lessee shall diligently and expeditiously pursue to completion the construction of all approved Lessee's Improvements and shall complete construction of all of Lessee's Improvements no later than the earlier of i) twelve (12) months after commencement of such construction, or ii) any earlier date required by this Agreement or by Lessor's approval of the plans. The preceding sentence does not require Lessee to complete initial construction of the Project prior to the Completion Deadline. Notwithstanding anything in this paragraph to the contrary, the time period for completing restoration work in the event of damage to the premises is twenty-four (24) months after the damage.

6.5 Construction Coordination. Lessee shall conduct all of its construction activities at and about the Premises so as not to materially interfere with activities, operation, and other construction upon the Airport or surrounding properties.

6.6 Approval Required. Lessee shall not perform any construction work requiring a building permit without having first received the written approval by Lessor of the plans for the work.

6.7 Effect of Approval. Lessor's approval of plans submitted shall be irrevocable for purposes of this Agreement and shall constitute approval (but only at the level of detail of the

applicable stage of the review process) of the matters plainly shown on the plans approved. Lessor shall not reject subsequent plans to the extent the matter to which Lessor objects was clearly included in plans previously approved by Lessor and plainly shown on plans previously approved by Lessor. However, Lessor is not precluded from objecting to refinements or implementation of matters previously approved or treatment of matters previously not approved.

6.8 Utility Modifications. Any changes to utility facilities shall be strictly limited to the Premises and shall be undertaken by Lessee at its sole cost and expense.

6.9 Design Requirements. All Lessee's Improvements shall comply with the following design requirements:

6.9.1 All Lessee's Improvements shall be contained entirely within the Premises and without any encroachment or dependence upon any other property, except that Lessee's Improvements shall include construction of related curbs, gutters, pavement, landscaping, and other street improvements Lessor determines to be appropriate.

6.9.2 All Lessee's Improvements shall comply with all requirements of law, any applicable insurance contracts, all Site Documents, and this Agreement.

6.9.3 Lessee shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Premises.

6.9.4 To the extent requested by Lessor, Lessee's plans shall include a description of construction methods employed to address environmental issues affecting or affected by the Premises and protect other facilities at the Airport and surrounding properties.

6.10 Disturbance of Toxic Substances. Prior to undertaking any construction or maintenance work, Lessee shall cause the Premises to be inspected to ensure that no potential asbestos or other Toxic Substances are disturbed. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Lessee shall cause the contractor or other person performing such work to give to Lessor notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials and will indemnify, defend and hold Lessor harmless against any disturbance of such materials in the course of the contractor's or other person's work. Lessee shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Lessee in connection with the Premises to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services.

6.11 Plans Required. Lessee's design of all Lessee's Improvements shall occur in three stages culminating in final working construction documents for the Lessee's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

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6.11.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, water systems, and other features significantly affecting the appearance, design, function and operation of each element of Lessee's Improvements. The conceptual plans must also show general locations and dimensions of all rooms, hallways and other areas together with the number of square feet of building and other area that all significant uses and facilities will respectively occupy.

6.11.2 Preliminary plans showing all building finishes and treatments, finished elevations, general internal and external building design and decoration schemes (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other utility systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of Final Plans.

6.11.3 Final Plans.

6.12 Approval Process. The following procedure shall govern Lessee's submission to Lessor of all plans for Lessee's Improvements, including any proposed changes by Lessee to previously approved plans:

6.12.1 Upon execution of this Agreement, Lessor and Lessee shall each designate a construction manager to coordinate the respective party's participation in designing and constructing the Lessee's Improvements. Lessor's construction manager will not be exclusively assigned to this Agreement or the Lessee's Improvements.

6.12.2 All plans submitted under this Agreement shall show design, appearance, style, landscaping, mechanical, utility, communication and electrical systems, building materials, layout, colors, streets, sidewalks, transportation elements, views, and other information reasonably deemed necessary by Lessor for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by Lessor for the level of plans required by this Agreement.

6.12.3 All submissions by Lessee under this Agreement shall be delivered directly to Lessor's construction manager and shall be clearly labeled to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Each submittal of plans by Lessee for Lessor's review shall include two (2) complete sets of the plans on paper together with two (2) copies of the plans in electronic form. The plans in electronic form shall include vector line drawings of the improvements and such other information as this Agreement requires, all in a machine readable and manipulable form. The format of such data and the media upon which such data is supplied shall be such then reasonably common data format and media as specified from time to time by Lessor.

6.12.4 Lessee shall coordinate with Lessor as necessary on significant design issues prior to preparing plans to be submitted hereunder.

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6.12.5 In addition to other submissions required under this Agreement, Lessee shall simultaneously deliver to Lessor's construction manager copies of all applications and supplemental, supporting and related materials for all zoning, development review and similar processes for the Lessee's Improvements (excluding building permits).

6.12.6 No plans shall be deemed approved by Lessor until stamped "APPROVED PER PARAGRAPH _____ OF LEASE AGREEMENT" (or other words clearly evidencing Lessor's approval pursuant to this Agreement as distinguished from any regulatory or other approval) and dated and initialed, by Lessor's construction manager (collectively "Stamped").

6.12.7 Construction shall not commence until Lessee delivers to Lessor a formal certification in favor of Lessor by a qualified registered engineer acceptable to Lessor to the effect that the Lessee's Improvements are properly designed to be safe and functional and comply with this Agreement. Such certification shall be accompanied by and refer to such supporting information and analysis as Lessor may require. Such certification shall be on the face of the plans themselves.

6.12.8 Lessee acknowledges that Lessor's construction manager's authority with respect to the Premises is limited to the administration of the requirements of this Agreement. No oral approval, consent or direction by Lessor's construction manager or other persons affiliated with Lessor inconsistent with this Agreement shall be binding upon Lessor. Lessee shall be responsible for securing all zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Lessee's Improvements and all other activities related to the Premises and shall not rely on Lessor or Lessor's construction manager for any of the same.

6.12.9 Lessor's issuance of building permits or zoning clearances, or any other governmental reviews or actions shall not constitute approval of any plans for purposes of this Agreement. Lessee's submission of plans under this Agreement, Lessor's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals.

6.12.10 Lessor has the right to require Lessee to obtain approval for any Lessee Improvements from the City of Scottsdale Development Review Board and any similar body.

6.12.11 Lessee shall hand deliver all plans to Lessor no later than each submission date. Submission dates shall be such dates as are necessary for Lessee to timely obtain the approvals required by this Agreement. Lessee is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

6.12.12 Within thirty (30) days after Lessor's receipt of plans from Lessee, Lessor shall make available to Lessee one (1) copy of the plans Lessee submitted either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

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6.12.13 If changes are required, Lessee shall revise the plans incorporating the changes requested by Lessor and shall within thirty (30) days after Lessor returns the marked up plans to Lessee submit revised plans to Lessor. Within twenty (20) days after Lessor's receipt of the revised plans, Lessor shall make available to Lessee one (1) copy of the revised plans either Stamped or marked to indicate the reasons that Lessor does not approve the plans.

6.12.14 Lessee shall provide to Lessor copies of any and all designs or plans for improvements upon the Premises for Lessor's unrestricted use at the Premises or elsewhere.

6.13 Funding Assurances. In addition to the security deposit and any other payment or performance required under this Agreement, Lessee shall at least two weeks prior to the commencement of any construction work by Lessee having an estimated cost of more than Ten Thousand Dollars (\$10,000) provide to Lessor the following assurances that Lessee will timely pay for the work to be completed (the "Funding Assurances") as follows:

6.13.1 Funding Assurances Amount. The Funding Assurance shall be in an amount (the "Funding Assurances Amount") equal to eighty percent (80%) of the full contract amounts payable directly or indirectly to all persons for the construction work. In the event the contract amounts increase, the Funding Assurances Amount shall increase by the same proportion.

6.13.2 Funding Assurances Alternatives. All Funding Assurances shall consist of one of the following:

6.13.2.1 A fully executed construction loan commitment or agreement legally obligating a reputable federally insured financial institution to fund construction.

6.13.2.2 A letter of credit meeting the requirements listed on Exhibit "E" attached hereto.

6.13.2.3 Written confirmation from a federally insured financial institution chosen by Lessor having offices in Maricopa County, Arizona to the effect that said institution is holding for Lessor funds (the "Construction Account") in the Funding Assurances Amount. Such funds shall be held in an interest bearing account in Lessor's name only. All interest shall remain in the Construction Account. All funds shall be owned by Lessor upon deposit in the Construction Account. Funds shall be disbursed to anyone other than Lessor only upon Lessor's notice to the institution that Lessor has received unrelated third party invoices for actual hard costs of construction labor or materials together with notice from Lessee that such funds may be disbursed. The invoices must be accompanied by a certificate from the third party that the third party has actually supplied the labor or materials to the Premises and by such additional information and things as Lessor may reasonably deem necessary to determine compliance with this Agreement. All distributions from the Construction Account shall be by check payable to Lessor or jointly payable to Lessee and the third party. Lessee shall provide to Lessor no later than the tenth day of each month a detailed statement of Construction Account activity during the preceding month. All funds will be immediately available to Lessor upon demand. At no time is Lessor required to pay or advance any funds not previously deposited by Lessee.

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6.14 Contractor Assurances. In addition to the Funding Assurances, the security deposit and any other payment or performance required under this Agreement, Lessee shall at least two weeks prior to the commencement of any construction work by Lessee having an estimated cost of more than Thirty Thousand Dollars (\$30,000) provide to Lessor evidence of the following assurances in favor of Lessee that Lessee's contractors will timely and properly complete and pay all suppliers and subcontractors for the work completed (the "Contractor Assurances") as follows:

6.14.1 Contractor Assurance Amount. Each Contractor Assurance shall be in an amount (the "Contractor Assurance Amount") equal to one hundred percent (100%) of the full contract amount payable directly or indirectly to all persons for the construction work.

6.14.2 Contractor Assurances Required. Lessee's obligation to cause its contractors to provide Contractor Assurances includes both of the following:

6.14.2.1 A payment bond in favor of Lessee covering all of the contracted work.

6.14.2.2 A performance bond in favor of Lessee covering all of the contracted work.

6.15 Contractor Assurance Qualifications. The issuer of each Contractor Assurance must be qualified to do business and in good standing in the State of Arizona and in its home state and must have a net worth of at least three times the Contractor Assurance amount. Each Contractor Assurance shall be issued by a person acceptable to Lessor and shall also at a minimum meet the requirements of A.R.S. § 34-222 and A.R.S. § 34-223, and other applicable laws.

6.16 Rules Applicable to Both Funding Assurances and Contractor Assurances. The following rules shall be applicable to both all Funding Assurances and all Contractor Assurances (collectively "Improvement Assurances"):

6.16.1 Issuer's Information. Prior to obtaining each Improvement Assurance, Lessee shall deliver a copy of this Agreement to the issuer of the Improvement assurance.

6.16.2 Amount Adjustment. In the event the required amount of an Improvement Assurance increases from time to time by more than ten percent (10%) above the prior amount, Lessee shall, on or before the date of the increase, deliver to Lessor an additional Improvement Assurance in the amount of such increase, or cause the existing Improvement Assurance held by Lessor to be amended to increase its amount.

6.16.3 Improvement Assurance Form. Each Improvement Assurance must be in form and substance acceptable to Lessor. The scope of Lessor's approval is to assure that the Improvement Assurance complies with this Agreement. Lessee shall deliver directly to Lessor's legal department (together with a copy to Lessor as provided for notices under this Agreement) a full and complete draft form of each Improvement Assurance and all related and supporting documentation at least thirty (30) days prior to the date the actual Improvement Assurance is

required. Lessor shall give its comments concerning the draft form no later than twenty-one (21) days after receiving the draft form.

6.16.4 Improvement Assurance Claims. Lessor shall not make demand on an Improvement Assurance contrary to the provisions of this Agreement; but in the event of a dispute over Lessor's obtaining and using the benefits of an Improvement Assurance, neither Lessee, the Improvement Assurance issuer, nor any third party shall be entitled to interfere in any way (including without limitation, restraining order, injunctions or other judicial remedies, all of which are hereby unconditional and irrevocably waived) with Lessor's obtaining or using the funds or other benefits of the Improvement Assurance. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

6.16.5 Lessor's Improvement Assurance Claim. In the event Lessee is in default or the construction is not completed or timely progressing for any reason, Lessor shall have the right to set-off, deduct and withhold an amount or otherwise make claim upon any Improvement Assurance sufficient to complete the construction and to pay all other costs and expenses related to such construction. Additionally, in such event, Lessor shall have the right to claim an amount sufficient to pay all costs of litigation, attorneys fees and costs required by a judgment or decision relating to any contingent liability that, in the opinion of Lessor, may be outstanding at the time of termination. Further, Lessor may draw on any Improvement Assurance at any time whatsoever to satisfy any of Lessee's obligations under this Agreement. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

6.16.6 Improvement Assurance Term. Lessee shall give Lessor not less than thirty (30) days nor more than sixty (60) days advance notice of expiration or other termination of an Improvement Assurance. Any replacement Improvement Assurance must be delivered to Lessor at least thirty (30) days before expiration of the Improvement Assurance being replaced. Any replacement Improvement Assurance must meet all requirements of this Agreement. No Improvement Assurance may be modified without Lessor's consent.

6.17 Release of Improvement Assurance. Within thirty (30) days after the last to occur of the following, Lessor shall deliver to Lessee notice that the Improvement Assurance is released: i) Lessee's completion of the Lessee Improvements, ii) Lessee's payment of all design, construction, and all other amounts to be paid in connection with construction of the Lessee Improvements, iii) Lessee's performance and payment of all other obligations related to the Improvement Assurance and the construction, payment and other obligations thereto, and iv) Lessee's giving to Lessor notice requesting the release stating that the preceding conditions have been satisfied along with such supporting documentation as Lessor may reasonably require. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

VII. LESSEE'S INITIAL PROJECT CONSTRUCTION

7 Lessee's Initial Project Construction. No later than the Completion Deadline, Lessee shall complete construction of the Project in accordance with all requirements of this Agreement, including without limitation those relating to Lessee's Improvements, and the following:

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7.1 Initial Plans Approved. By entering into this Agreement, Lessor approves for purposes of this Agreement only, the design of the Lessee's Improvements comprising the Project to the extent their design is set forth in the Site Plan and other exhibits to this Agreement. For purposes of Lessee's initial Project construction, said approval satisfies the requirement under this Agreement that Lessee obtain Lessor's approval of plans to the extent of matters shown in the Site Plan and other exhibits. However, Lessee must still submit to Lessor and obtain Lessor's approval of matters not shown on the Site Plan and other exhibits, and changes, modifications, refinements and particular implementations of matters that are shown on the Site Plan and other exhibits.

7.2 Project Definition. As of the date of this Agreement, the Project is only in the preliminary design stages. Unless otherwise agreed by the parties, the Project shall conform to the Site Plan (which listing of requirements is not intended to be exhaustive of the improvements required to construct the first class _____ facility and other improvements this Agreement requires Lessee to construct):

7.2.1 Main Components. Lessee's Improvements include all improvements shown on the Site Plan or required by applicable law.

7.2.2 Infrastructure. Lessee's Improvements include all related work upon streets, sidewalks, drainage and other facilities upon the Premises and upon other real property near the Premises.

7.2.3 Other Design Requirements. The Project shall include all such other improvements and other facilities as may be necessary to operate the Premises in the manner contemplated by this Agreement.

7.3 Design and Construction Professionals. All construction and plans preparation for the Project from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Lessee. All of Lessee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to the Project.

7.4 Project Design and Construction Schedule. Lessee shall design and construct the Project according to the following schedule:

7.4.1 Lessee shall obtain Lessor's approval of conceptual plans for the Project no later than eighteen (18) months prior to the Completion Deadline.

7.4.2 Lessee shall obtain Lessor's approval of preliminary plans for all Components of the Project no later than fifteen (15) months prior to the Completion Deadline.

7.4.3 Lessee shall obtain Lessor's approval of Final Plans for the Project no later than twelve (12) months prior to the Completion Deadline.

7.4.4 Lessee shall commence constructing the Project no later than eight (8) months prior to the Completion Deadline.

7.4.5 Lessee shall complete construction of the entire Project, obtain certificates of occupancy for the entire Project, and commence operating the Project in the manner contemplated by this Agreement, no later than the Completion Deadline.

VIII. MAINTENANCE AND UTILITIES

8 Maintenance and Utilities. Except as expressly provided below, Lessee shall be solely responsible for all maintenance, repair and utilities for the Premises during the term of this Agreement.

8.1 Maintenance by Lessor. Lessor has no maintenance or repair obligations for the Premises except that Lessor is responsible to maintain and repair any other utilities Lessor may install upon the Premises.

8.2 Utility Interruptions. Lessor is not responsible for any interruption of utilities to or upon the Premises or other difficulties related to utilities at the Premises. Without limitation:

8.2.1 Lessor is not responsible for utility interruptions caused inside or outside the Premises.

8.2.2 Lessor is not responsible for the acts, breach, errors or omissions of any provider or consumer of electrical service or other utilities to the Premises.

8.3 Utility Costs. Lessee shall pay all charges, fees, deposits and other amounts for all natural gas, air conditioning, heating, electricity, and other utilities used at the Premises during the term of this Agreement.

8.4 Maintenance by Lessee. Lessee shall at all times repair, and maintain and replace the Premises and all of Lessee's facilities thereat at Lessee's sole expense in a first-class, sound, clean and attractive manner, meeting or exceeding the manner of maintenance at first class comparable facilities in the western United States as determined in Lessor's reasonable discretion. Such Lessee obligations extend to any improvements Lessee may construct on public lands outside the Premises unless Lessor expressly gives Lessee written notice otherwise. By way of example and not limitation, Lessee shall be responsible for the following minimum requirements:

8.4.1 General. Lessee shall perform all irrigation, landscape, building and other maintenance required to operate the Premises in a first class manner with appearance, landscaping, upkeep, repair and refurbishing, cleanliness and healthy vegetation.

8.4.2 Trash. Adequate and sanitary handling and disposal, away from the Premises and the Airport, of all trash, garbage and other refuse related to Lessee's use of the Premises. Without limitation, Lessee shall provide and use suitable covered receptacles for all trash and other refuse related to Lessee's use of the Premises. Piling of boxes, cartons, barrels, debris or other items outside the Premises or in a manner visible from outside the Premises or in a manner visible to areas open to the public is prohibited. Lessee shall contract for a large metal roll-off dumpster service at the Premises. The area in which trash containers are stored shall be kept clean and free of all trash and debris and shall be shielded from public view.

8.4.3 Recycling. Lessee shall comply with such paper, plastic or other recycling or conservation programs Lessor may establish for the Airport from time to time.

IX. BREACH BY LESSEE

9 Breach by Lessee. Lessee shall comply with, perform and do each performance and provision required of Lessee herein and shall cause all persons using the Premises or claiming through or under Lessee or this Agreement to do the same. Lessee's failure to do so shall be a breach by Lessee of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by Lessee of Lessee's material obligations under this Agreement:

9.1.1 If Lessee shall be in arrears in the payment of Rent and shall not cure such arrearage within ten (10) days after Lessor has notified Lessee in writing of such arrearage.

9.1.2 The occurrence of any default or other failure by Lessee to perform all obligations under any of the Site Documents.

9.1.3 If Lessee shall fail to operate the facilities as herein required for a period of three (3) consecutive days or a total of five (5) days within any calendar year.

9.1.4 If Lessee shall abandon the Premises or this Agreement.

9.1.5 If Lessee shall be the subject of a voluntary or involuntary bankruptcy, insolvency or similar Proceeding or if any general assignment of any of Lessee's property shall be made for the benefit of creditors (collectively a "Lessee Insolvency").

9.1.6 If any representation or warranty made by Lessee in connection with this Agreement or the negotiations leading to this Agreement shall prove to have been false in any material respect when made.

9.1.7 If Lessee shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the Premises or timely pay any taxes pertaining to the Premises and shall not cure such failure within thirty (30) days.

9.1.7.1 If Lessee shall fail or neglect to do or perform or observe any other provisions contained herein on its part to be kept or performed and such failure or neglect to do or perform or observe any of such other provisions shall continue for a period of thirty (30) days after Lessor has notified Lessee in writing of Lessee's default hereunder.

9.1.8 If Lessee shall repeatedly fail to timely perform any requirement of this Agreement.

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9.2 Lessor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Lessor may, at its option and from time to time, exercise any or all or any combination of the following remedies in any order and repetitively at Lessor's option:

9.2.1 Lessor's right to terminate this Agreement for nonpayment of Rent or for any other Event of Default is hereby specifically provided for and agreed to.

9.2.2 Without demand or notice, enter into and upon the Premises or any part thereof, and repossess the same of its former estate, and expel Lessee and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

9.2.3 Enforce a lien (hereby established) upon Lessee's property at the Premises securing all of Lessee's obligations hereunder.

9.2.4 Cause a receiver to be appointed for the Premises and for the continuing operation of Lessee's business thereon.

9.2.5 Pay or perform, for Lessee's account and at Lessee's expense, any or all payments or performances required hereunder to be paid or performed by Lessee.

9.2.6 Abate at Lessee's expense any violation of this Agreement.

9.2.7 Pursue at Lessee's expense any and all other remedies, legal or equitable, to which Lessor may be entitled.

9.2.8 Refuse without any liability to Lessee therefore to perform any obligation imposed on Lessor by this Agreement.

9.2.9 Be excused from further performance under this Agreement.

9.2.10 Insist upon Lessee's full and faithful performance under this Agreement and upon Lessee's full and timely payment of all Rent during the entire remaining term of this Agreement.

9.2.11 Assert or exercise any other right or remedy permitted by law.

9.3 Non-waiver. Lessee acknowledges Lessee's unconditional obligation to comply with this Agreement. No failure by Lessor to demand any performance required of Lessee under this Agreement, and no acceptance by Lessor of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way Lessor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Lessor of Rent or other performances hereunder shall be deemed a compromise or settlement of any claim Lessor may have for additional or further payments or performances. Any waiver by Lessor of any breach of condition or covenant herein contained to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent Lessor from declaring a default for any succeeding or continuing breach either of the same

condition or covenant or otherwise. No statement, bill or notice by Lessor concerning payments or other performances due hereunder shall excuse Lessee from compliance with this Agreement nor estop Lessor (or otherwise impair Lessor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against Lessor unless made in writing by a duly authorized representative of Lessor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LESSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

9.4 Reimbursement of Remedies Lessor's Expenses. Lessee shall pay to Lessor upon demand any and all amounts expended or incurred by Lessor in performing Lessee's obligations.

9.5 Inspection. Lessor shall have access to the Premises at all times and upon reasonable notice (except, in the event of an emergency without notice) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Premises or exercising Lessor's other rights hereunder. Lessee shall promptly undertake appropriate action to rectify any deficiency (identified by Lessor during such inspections or otherwise) in Lessee's compliance with this Agreement.

X. TERMINATION

10 Rights at Termination. Termination of this Agreement due to Lessee's breach or for any other reason does not terminate Lessee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Lessee's liability related to this Agreement.

10.1 Delivery of Possession. At the expiration of the term hereof or upon any sooner termination thereof, Lessee shall without demand, peaceably and quietly quit and deliver up the Premises to Lessor thoroughly cleaned, in good repair, and with all utilities operating, with the Premises maintained and repaired and in as good order and condition, reasonable use and wear excepted, with the Premises as the same now are or in such better condition as the Premises may hereafter be placed. Upon termination, Lessee shall deliver to Lessor any security deposits, prepaid rents, or other amounts for which Lessor deems a claim may be made respecting the Premises.

10.2 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Lessee shall provide to Lessor upon demand quit claim deeds covering the Premises executed by Lessee and by all persons claiming through this Agreement or Lessee any interest in or right to use the Premises.

10.4 Disposition of Lessee's Equipment. All personal property owned or used by Lessee (excluding money and business records) at the Premises under this Agreement shall be divided into two categories ("Attached Items" and "Unattached Items").

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10.4.1 Attached Items are any and all fixtures and structural or permanent improvements placed upon the Premises together with all pipes, fences, conduits, traffic bumpers, pumps, valves, sprinklers, meters, controls, air conditioners, heaters, water heaters and all other mechanical systems and their components, monitors, timers, utility lines and all other equipment and personal property of every description attached in any way to the Premises or installed at a fixed location upon the Premises together with every part of the utility systems serving the Premises, whether or not located upon the Premises. The Attached items include all fuel tanks, pumps, hoses, nozzles, and related items. The Attached Items exclude air compressors, even if they are installed at a fixed location at the Premises.

10.4.2 Unattached Items are all fixtures, furniture, furnishings, equipment and other personal property located at the Premises excluding Attached Items.

10.5 Fixtures and Improvements. Upon termination of this Agreement through expiration, default or otherwise, if the same has not occurred earlier, title to any and all Attached Items shall automatically vest in Lessor without any payment by Lessor or any compensation to Lessee and without requirement of any deed, conveyance, or bill of sale. However, if Lessor shall request any documents in confirmation thereof, Lessee shall promptly execute, acknowledge and deliver the same. Unattached Items owned by Lessee shall continue to be owned by Lessee.

XI. INDEMNITY AND INSURANCE

[Note: Lessor may elect to increase or decrease insurance requirements based on lessee's permitted uses.]

11 Indemnity and Insurance. During the term of this Agreement, Lessee shall insure the Premises and property and activities at and about the Premises and shall provide insurance and indemnification as follows:

11.1 Insurance Required. Prior to entering, occupying or using the Premises in any way and in any event not later than the date thirty (30) days after the date of this Agreement, and at all times thereafter, Lessee shall obtain and cause to be in force and effect the following insurance:

11.1.1 Commercial General Liability. Commercial general liability insurance with a limit of One Million Dollars (\$1,000,000.00) for each occurrence, a limit of Two Million Dollars (\$2,000,000.00) for products and completed operations annual aggregate, and a limit of Two Million Dollars (\$2,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, [any medical professionals based on the Premises], and liability assumed under an "insured contract" including this Agreement. *[Note: Delete medical professionals if not applicable.]* The policy will cover Lessee's liability under the indemnity provisions of this Agreement. The policy shall contain a "separation of insureds" clause.

[Note: Delete liquor liability insurance if not applicable.]

11.1.2 Liquor Liability. Liquor liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for each claim and Two Million Dollars (\$2,000,000.00) for all claims

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in the aggregate. This coverage is required at all times when alcohol is being consumed, sold, or served at the Premises, or when Lessee holds any type of liquor license for the Premises, or when any liquor license otherwise exists with respect to the Premises.

11.1.3 Automobile Liability. Automobile liability insurance with limit of One Million Dollars (\$1,000,000.00) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Lessee's use of the Premises. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off loading. *[Note: Increase auto limit to \$5,000,000.00 if auto-intensive tenant.]*

11.1.4 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000.00) for each accident, One Hundred Thousand Dollars (\$100,000.00) disease for each employee, Five Hundred Thousand Dollars (\$500,000.00) policy limit for disease. If Lessee has no employees, Lessee shall provide a "sole proprietor waiver" signed by Lessee in form and content acceptable to Lessor. All contractors and subcontractors must provide like insurance.

11.1.5 Special Risk Property. Unless waived by Lessor in writing, all risk property insurance coverage damage to or destruction of all buildings and other improvements to the Premises, including without limitation, all improvement existing upon the Premises prior to this Agreement or hereafter constructed in an amount equal to full replacement cost of all such improvements. Such insurance shall be special causes of loss policy form (minimally including perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood). Coverage shall include pollutant clean up and removal with minimum limits coverage of Fifty-Thousand Dollars (\$50,000.00).

11.1.6 Personal Property. Lessee shall maintain special causes of loss personal property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to full replacement cost of all personal property used in connection with the Premises.

[Note: Delete if not applicable.]

11.1.7 Environmental Impairment Liability. Lessee shall maintain Environmental Impairment Liability coverage for any fuel storage facility, tank, underground or aboveground piping, [fuel hoses, fuel trucks, pumps and other] ancillary equipment, containment system or structure used, controlled, constructed or maintained by Lessee in the amount of One Million Dollars (\$1,000,000.00) each incident, Two Million Dollars (\$2,000,000.00) aggregate. The policy shall cover on-site and off-site third party bodily injury and property damage including expenses for defense, corrective action for storage tank releases and clean-up for storage tank releases. [The environmental insurance coverage described in this paragraph is not required for aircraft fueling form a fuel truck owned and operated by a third party based at a different location at the Airport licensed to operate at the Airport, if the fuel truck has such insurance or other insurance appropriate in Lessor's discretion.]

11.1.8 Boiler and Machinery Insurance. Boiler and machinery insurance in the amount of the full replacement cost of all machinery and mechanical equipment.

11.1.9 Builders' Risk Property Insurance. Builders' risk insurance in the amount of the entire cost of the Project or other construction work at or related to the Premises as well as subsequent modifications thereto. Such builder's risk insurance shall be maintained until final payment for the construction work and materials has been made and until no person or entity other than Lessee and Lessor has an insurable interest in the Premises, whichever is later. This insurance shall include interests of Lessor, Lessee and all subcontractors and sub-subcontractors involved in any Lessee's Improvements or other construction work at or related to the Premises during the course of any construction, and shall continue until all work is completed and accepted by Lessee and Lessor. Lessee bears full responsibility for loss or damage to all work being performed and to works under construction. Builders' risk insurance shall be on a special causes of loss policy form (covering at least the perils of fire, lightning, explosion, windstorm and hail, smoke, aircraft and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, collapse and flood) and shall also cover false work and temporary buildings and shall insure against risks of direct physical loss or damage from external causes including debris removal and demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs". Builders' risk insurance must provide coverage from the time any covered property comes under Lessee's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will continue to provide coverage when the covered Premises or any part thereof are occupied. Builders' risk insurance shall be primary and not contributory.

[Note: Delete if not applicable.]

11.1.10 Hangarkeeper's Liability. If applicable, Lessee shall carry Hangarkeeper's Liability coverage covering the portions of the Premises used for aircraft storage in an amount equal to the full replacement cost of aircraft in the care, custody or control of Lessee for safekeeping, storage, service, repair or other reasons. Lessee shall cause any persons storing aircraft at the Premises to name Lessee and the Additional Insureds as additional insureds under their aircraft liability policies. Such policies shall contain waivers of subrogation as to Lessee and Lessor and the other Additional Insureds.

11.1.11 Other Insurance. Any other insurance Lessor may reasonably require for the protection of Lessor and Lessor's employees, officials, representatives, officers, directors, and agents (all of whom, including Lessor, are collectively "Additional Insureds"), the Premises, surrounding property, Lessee, or the activities carried on or about the Premises.

11.2 Policy Limit Escalation. Lessor may elect by notice to Lessee to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that Lessor reasonably determines to affect the prudent amount of insurance to be provided. In addition, the policy limits of all liability insurance policies that have an initial limit herein stated to be One Million Dollars (\$1,000,000.00) or more shall be automatically adjusted on each five (5) year annual anniversary of this Agreement based on changes in the Cost of Living Index in the same manner as provided for adjusting Base Rent and in accordance with the following rules:

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11.2.1 The resulting limit shall be rounded up to the nearest One Million Dollar (\$1,000,000.00) increment.

11.2.2 If the policy limit was increased for any reason in the preceding five (5) years, then the adjustment formula shall assume that the increased policy limit was in effect at the beginning of the five (5) year period.

11.3 Form of Insurance. All insurance provided by Lessee with respect to the premises, whether required by this Agreement or not, shall meet the following requirements:

11.3.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

11.3.2 If Lessee uses any excess insurance then such excess insurance shall be "follow form" equal to broader in coverage than the underlying insurance.

11.3.3 Lessee must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to Lessor that all insurance coverage required by this Agreement is provided.

11.3.4 Lessee's insurance shall be primary insurance.

11.3.5 All policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against City of Scottsdale, and other Additional Insureds.

11.3.6 No deductibles, retentions, or "self insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate per year per policy. Lessee shall be solely responsible for any self-insurance amount or deductible.

11.3.7 No deductible shall be applicable to coverage provided to Lessor.

11.3.8 Lessor may require Lessee from time to time to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

11.3.9 All policies shall contain provisions that neither Lessee's breach of a policy requirement or warrant, nor failure to follow claims reporting procedures, shall affect coverage provided to Lessor.

11.3.10 All policies except workers' compensation must name Lessor and the other Additional Insureds as additional insureds. Lessee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement.

11.3.11 All applicable policies must name Lessor as a loss payee as respects proceeds relating to the Premise.

11.3.12 All policies must provide Lessor with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage. The insurer's duty to notify Lessor of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

11.3.13 All policies shall require that notices be given to Lessor in the manner specified for notices to Lessor under this Agreement.

11.4 Insurance Certificates. Lessee shall evidence all insurance by furnishing to Lessor certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that Lessor and the other Additional Insureds are additional insureds and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form acceptable to Lessor. All certificates are in addition to the actual policies and endorsements required. Lessee shall provide updated certificates at Lessor's request.

11.5 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Lessor. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

11.6 Lessor's Election to Provide Insurance. Lessor is not required to carry any insurance covering or affecting the Premises or use of Lessor's property related to this Agreement. Lessor may elect to acquire all or any part of the insurance required by this Agreement (with or without any other real property Lessor may own, or control) and Lessee shall pay to Lessor the costs of such insurance as reasonably determined by Lessor. Lessee shall provide all required insurance not so provided by Lessor. Any insurance or self insurance maintained by Lessor shall not contribute to Lessee's insurance.

11.7 Insurance Proceeds. All insurance proceeds (whether actually paid before or after termination of this Agreement) shall be paid [to Lessee and Lessor jointly] [directly to Lessor and owned by Lessor for Lessor's use in compensating Lessor for the loss of the Premises and use of the Premises, protecting Lessor, the Premises and Lessor's property from every other loss or exposure suffered by Lessor, and satisfying and securing Lessee's obligations hereunder. Thereafter, proceeds of damage to the Premises shall be used as provided elsewhere in this Agreement. Any remaining proceeds shall be allocated among Lessor, Lessee and other interested parties as their interests may appear.

11.8 No Representation of Coverage Adequacy. By requiring insurance herein, Lessor does not represent that coverage and limits will be adequate to protect Lessee. Lessor reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Lessee from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times.

11.9 Use of Subcontractors. If Lessee subcontracts or otherwise delegates any work or use of the License Areas under this Agreement, Lessee shall cause the delegatee to execute and provide to Lessor a writing executed by the delegatee containing the same indemnification clauses and insurance requirements set forth herein protecting Lessor and Producer. Lessee shall provide to Lessor certificates of insurance and other evidence that such requirements have been satisfied.

11.10 Primary Insurance. Lessee's insurance shall be primary insurance. Any insurance or self insurance maintained by Lessor shall not contribute to Lessee's insurance.

11.11 Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Lessee (and all other persons using, acting, working or claiming through or for Lessee or this Agreement if they participated in causing the claim in question) shall jointly and severally pay, indemnify, defend and hold harmless Lessor and all other Additional Insureds for, from and against any and all claims or harm related to the Premises or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) which may arise in any manner out of any use of the Premises or Lessor's property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Premises or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by Lessor or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Lessee or Lessor may be liable. The Indemnity shall also include and apply to any environmental, personal injury or other liability relating to Lessor's or Lessee's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by Lessor or Lessee under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

11.11.1 Claims arising only from the sole negligence of Lessor.

11.11.2 Claims that the law prohibits from being imposed upon Lessee.

11.12 Risk of Loss. Lessor is not required to carry any insurance covering or affecting the Premises or use of Lessor's property related to this Agreement. Lessee assumes the risk of any and all loss, damage or claims to the Premises or related to Lessee's use of the Premises or other property of Lessor, Lessee or third parties throughout the term hereof. Lessor expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Premises or any activities, uses or improvements related to the Premises. Lessee's obligations to indemnify do not diminish in any way Lessee's obligations to insure; and Lessee's obligations to insure do not diminish in any way Lessee's obligations to indemnify.

Lessee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Lessee under or connected with this Agreement. Lessee shall be responsible for any and all damages to its property and equipment related to this Agreement and shall hold harmless and indemnify Lessor and all other Additional Insureds regardless of the cause of such damages. In the event Lessee secures other insurance related to the Premises or any improvements, property or uses related thereto, Lessee shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against Lessor and the other Additional Insureds.

11.13 Insurance to be Provided by Lessees, Sublessees and Others. Lessee shall cause any sublessees, contractors or other persons occupying, working on or about, or using the Premises pursuant to this Agreement to also provide for the protection of Lessor and all other Additional Insureds all of the insurance and indemnification required by this Agreement. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Lessee provides. Lessee shall cause any persons basing aircraft at the Premises to name Lessee and the Additional Insureds as additional insureds under their aircraft liability policies. Such policies shall contain waivers of subrogation as to Lessee and Lessor and the other Additional Insureds. *[Note: Delete preceding sentence if not applicable.]*

XII. CONDEMNATION

12 Condemnation. The following shall govern any condemnation of any part of or interest in the Premises (the "Part Taken") and any conveyance to a condemnor in avoidance or settlement of condemnation or a threat of condemnation:

12.1 Termination as to Part Taken. This Agreement shall terminate as to the Part Taken on the date (the "Condemnation Date"), that is the earlier of the date title to the Part Taken vests in the condemnor, or the date upon which the condemnor is let into possession of the Part Taken. Lessee shall execute and deliver to Lessor deeds or other instruments reasonably requested by Lessor conveying and assigning to Lessor Lessee's entire interest in the Part Taken. In the event of a partial taking, this Agreement shall continue in full force and effect as to the part of the Premises not taken.

12.2 Determining Partial or Total Condemnation. A condemnation of the Premises which renders the Premises unsuitable for the Permitted Uses (an "Interfering Condemnation"), or which takes the entire Premises, shall be deemed to be a total condemnation. Any other condemnation shall be a partial condemnation. Within fifteen (15) days after the commencement of any condemnation, Lessee and Lessor shall each give to the other a notice stating its respective opinion as to whether the condemnation is total or partial and the reasons for the opinion. Within fifteen (15) days thereafter, Lessor shall determine in Lessor's reasonable discretion whether the condemnation is total or partial.

12.3 Rent Adjustment. In the event of a partial condemnation, Base Rent shall be reduced by a percentage equal to the percentage of the Premises land area taken. The effective date of the Base Rent adjustment shall be the Condemnation Date.

12.4 Condemnation Proceeds. Lessee hereby assigns and transfers to Lessor Lessee's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Lessee shall execute and deliver to Lessor assignments or other instruments reasonably requested by Lessor confirming such assignment and transfer. Lessee shall immediately pay to Lessor any Condemnation Proceeds Lessee may receive. The Condemnation Proceeds shall not include relocation benefits awarded specifically to Lessee to cover expenses of relocating Lessee's business located at the Premises at the time of the condemnation. Such relocation benefits shall be owned by and paid directly to Lessee only.

12.5 Proceeds Account Deposit. Separate and apart from any condemnation action, Lessor shall deposit into the Proceeds Account (the "Condemnation Deposit") a portion of the Condemnation Proceeds (the "Condemnation Deposit Amount") as follows:

12.5.1 The Condemnation Deposit Amount shall be calculated as follows:

12.5.1.1 First, begin with the actual original capital cost paid by Lessee to construct the Lessee's Improvements condemned.

12.5.2.1 Second, adjust such actual cost based on the Cost of Living Index in the same manner provided for adjustment of Base Rent.

12.5.3.1 Third, reduce said adjusted actual cost by five percent (5%) for each year or portion of a year having passed from the time of construction.

12.5.4.1 Fourth, subtract any amount necessary to insure that the Condemnation Deposit Amount does not exceed the net amount actually received by Lessor with respect to such Lessee's Improvements.

12.5.2 Lessor shall make the Condemnation Deposit within thirty (30) days after Lessor receives the condemnation proceeds.

12.6 Lessee's Condemnation Work. In the event of a partial condemnation, Lessee shall restore the remainder of the Premises to its condition at the time of such condemnation less the portion lost in the taking. In the event of an Interfering Condemnation, Lessee shall perform such demolition or restorative work upon the remaining Premises as Lessor may direct, except that the cost of such work shall not exceed the cost of demolishing the improvements then existing upon the remaining Premises. Disbursements from the Proceeds Account shall be subject to the rules applicable to the Proceeds Account.

12.7 Power to Condemn. Lessee acknowledges that Lessor and others from time to time may use the power to condemn the Premises or any interest therein or rights thereto. Lessor has not relinquished any right of condemnation or eminent domain over the Premises. Lessor does not warrant that Lessor will not condemn the Premises during the term of this Agreement, but Lessor does not presently have intentions to condemn the Premises.

XIII. DAMAGE TO OR DESTRUCTION OF PREMISES

13 Damage to or Destruction of Premises. The following provisions shall govern damage to the Premises:

13.1 Damage to Entire Premises. If the Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, and the cost of restoring the damage would exceed fifty percent (50%) of the then estimated cost of constructing all improvements upon the Premises, Lessee shall have a ninety (90) day period following such damage to Lessor that Lessee elects to terminate this Agreement. Such notice shall not be effective unless it is also signed by Primary Lienholder. Lessee's failure to give such notice shall constitute Lessee's election not to terminate this Agreement. In the event of damage to the Premises to a lesser degree or extent this Agreement shall not terminate.

13.2 Restoration Work. Whether or not this Agreement is terminated, Lessee shall perform certain construction work at Lessee's expense ("the Restoration Work"). If this Agreement is terminated, the Restoration Work shall be all engineering, design and construction work necessary to demolish, clear and clean the Premises to the extent and as directed by Lessor. If this Agreement is not terminated, then the Restoration Work shall be all engineering, design and construction work necessary to restore the Premises to the condition existing prior to the damage.

13.3 Restoration Process. Lessee's performance of the Restoration Work shall be subject to the approval process and other requirements for Lessee's Improvements. Lessee shall perform the Restoration Work with due diligence and at Lessee's sole cost and expense.

13.4 Insurance Proceeds. All property insurance proceeds (whether actually paid before or after termination of this Agreement) shall be paid directly to Lessor and owned by Lessor. Lessor shall deposit said proceeds in an account (the "Proceeds Account") with a federally insured financial institution having offices in Maricopa County, Arizona. The preceding sentence does not apply to insurance proceeds of vehicles or other personalty not attached to the Premises. The Proceeds Account shall be an interest bearing account in Lessor's name only. All interest shall remain in the Proceeds Account. All funds will be immediately available to Lessor upon demand. At no time is Lessor required to pay or advance any funds not in the Proceeds Account.

13.5 Proceeds Account Use Priorities. The Proceeds Account funds shall be used for the following purposes:

13.5.1 Funds in the Proceeds Account shall be used only for paying for the Restoration Work until the cost of the Restoration Work has been disbursed by Lessor to Lessee or to third parties in connection with the Restoration Work. Inadequacy of funds in the Proceeds Account does not excuse Lessee from Lessee's obligation to perform the Restoration Work.

13.5.2 Funds in the Proceeds Account shall next be used for compensating Lessor for the loss of the Premises and use of the Premises, protecting Lessor, the Premises and Lessor's property from every other loss or exposure suffered by Lessor due to the damage, and satisfying any of Lessee's obligations then due hereunder.

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13.5.3 Any remaining funds in the Proceeds Account shall be distributed to Lessee, Lessor and any other interested parties as their interests may appear.

13.6 Use of Proceeds Account for Restoration Work. The following shall govern disbursement of funds from the Proceeds Account for the Restoration Work:

13.7.1 All distributions from the Proceeds Account shall be by check payable to Lessor or jointly payable to Lessee and the third party.

13.7.2 Lessee's applications for payment shall be prepared according to a schedule of values for the work prepared by Lessee's architect, subject to Lessor's reasonable approval.

13.7.3 Funds shall be disbursed within fourteen (14) days after Lessor has received notice from Lessee requesting that such funds be disbursed. Such notice shall be accompanied by the following:

13.7.3.1 A description of the work completed.

13.7.3.1 Unrelated third party invoices for design, engineering or related professional services rendered or actual hard costs of demolition or construction labor or materials.

13.7.3.1 Certificates from the third party payee that the third party has actually supplied the labor or materials to the Premises.

13.7.3.1 Appropriate mechanics and materialmen's lien waivers.

13.7.3.1 Such additional documentation and confirmations as Lessor may reasonably deem necessary to confirm compliance with this Agreement.

13.7.4 The Proceeds Account shall qualify as a satisfactory Funding Assurance.

13.8 Accelerated Funding. In order to avoid delay in completing the Restoration Work due to time constraints of the Proceeds Account, Lessee may do either or both of the following:

13.8.3.1 Advance its own funds (the "Reimbursable Funds") for the Restoration Work from time to time and subsequently obtain reimbursement from the Proceeds Account subject to compliance with the requirements for disbursements from the Proceeds Account. If Lessee provides receipts showing Lessee has already paid the third party payee, then checks reimbursing Reimbursable Funds to Lessee shall name only Lessee as payee.

13.8.3.1 Unilaterally request that Lessor make a one-time single disbursement to Lessee (the "Working Funds"). Lessee shall hold the Working Funds in a separate bank account and shall use the Working Funds only during the course of the Restoration Work to make progress payments to third parties for the Restoration Work. The amount of the Working Funds shall not exceed the greater of Fifty Thousand Dollars (\$50,000.00) (which amount shall be adjusted from time to time according to the Cost of Living Index in the same manner

provided for adjustment of Base Rent) or ten percent (10%) of the estimated cost of the Restoration Work. Upon completion of the Restoration Work, Lessee shall return any excess Working Funds to the Proceeds Account.

13.9 Monthly Restoration Work Report. Lessee shall provide to Lessor no later than the tenth day of each month a written report of the progress of the Restoration Work along with detailed statement of Proceeds Account, Reimbursable Funds and Working Funds activity during the preceding month.

13.10 Proceeds Account Variations. Lessee's city manager or designee shall have the authority to cooperate with Lessee's lienholder to implement variations to the requirements and administration of the Proceeds Account. Any such variations must provide to Lessor the substantive protections of the Proceeds Account afforded by this Agreement in said city manager or designee's sole and absolute discretion, must not allow insurance proceeds to be used to pay the debt, must be approved in writing in advance by said city manager or designee and by Lessor's city attorney in their sole and absolute discretion, and must otherwise be acceptable to Lessor's city manager or designee and Lessor's city attorney in their sole and absolute discretion.

XIV. LESSEE'S RECORDS

14. Lessee's Records. Lessee will maintain in a secure place at Lessee's corporate headquarters within the continental United States or at a secure location within Maricopa County, Arizona proper and accurate books, records, ledgers, correspondence, and other papers and repositories of information, relating in any manner to this Agreement and to all of Lessee's obligations hereunder.

14.1 Standards for Records. Lessee shall keep and maintain all books and records relating to the Premises in accordance with generally accepted accounting principles applied on a consistent basis. Lessee shall retain all records related to this Agreement or Lessee's performances hereunder for a period of seven (7) years after the period reported in the record.

14.2 Reporting. Lessee will furnish or cause to be furnished to Lessor, as soon as the same are available, and in any event within one hundred twenty (120) days after the end of each calendar year a certificate signed by the chief financial officer or managing general partner, as the case may be, of Lessee stating that the rental revenues and related information provided during the preceding year is correct and there exists no Event of Default and no condition, event or act, which with notice or lapse of time or both, would become an Event of Default or, if any such Event of Default or any such condition, event or act exists, specifying the nature and period of existence thereof and what action Lessee proposes to take with respect thereto. Lessee shall furnish, from time to time, such financial and other information as Lessor may reasonably request pertaining to Lessee's and Lessor's respective rights and obligations with respect to this Agreement as reasonably determined by Lessor.

14.3 Right of Inspection. Until the date three (3) years after termination of this Agreement, Lessee will (i) permit and assist Lessor and its representatives at all reasonable times to inspect, audit, copy and examine, as applicable, Lessee's facilities, activities and records, (ii) cause its employees, agents and, if reasonably necessary, accountants to give their full

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cooperation and assistance in connection with any such visits or inspections, (iii) make available such further information concerning Lessee's business and affairs relating to the Premises as Lessor may from time to time reasonably request, and (iv) make available to Lessor at the Premises (or at the offices of Lessor within the corporate limits of the City of Scottsdale) any and all records and reasonable accommodations for Lessor's audit and inspection. The preceding sentence does not require Lessee to pay for copies Lessor requests or Lessor's employees' or other agents' time or travel expenses. Such inspection shall be limited to matters relevant to Lessor's and Lessee's rights and obligations under this Agreement and activities related to the Premises as reasonably determined by Lessor.

14.4 Records Included. Lessee's records subject to this Agreement include, but are not limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computer data, invoices, cash register tapes and similar records, contracts, logs, accounts, commitments, arrangements, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers, memoranda and any and all other agreements, sources and repositories of information and matters that may in Lessor's reasonable judgment bear on any matters, rights, duties or obligations under or covered by this Agreement or any performance hereunder. Lessee need not disclose information that does not concern the Premises or Lessor's or Lessee's rights and obligations related to the Premises in Lessor's reasonable judgment.

14.5 Costs of Audit. If an audit, inspection or examination of Lessee's performance discloses underpayments (or other adjustments in favor of Lessor) of any nature in excess of three percent (3%) of any payments or single payment, Lessee shall pay to Lessor Lessor's actual cost (based on the amount paid by Lessor, or based on reasonable charges charged by private auditors and other service providers for comparable work if the audit is performed by Lessor's employees) of the audit, inspection or examination, together with late fees, interest, and other amount payable in connection with such adjustments or payments. Any adjustments and/or payments which must be made as a result of any such audit, inspection or examination (whether or not performed in-house by Lessor), shall be made within a reasonable amount of time (not to exceed 30 days) after Lessor gives to Lessee notice of Lessor's findings.

14.6 Monthly Reports. No later than the due date for each Rent Payment for each month, but in no event later than the end of each month, Lessee shall deliver to Lessor a report containing the information described on Exhibit "D" attached hereto. Except for fuel flowage information, each such report shall indicate by highlighting or similar marking any changes from the preceding month's report.

14.7 Applicable to Sublessees. By claiming under this Agreement, sublessees and others conducting a business based at the Premises shall also be deemed to have agreed to provide to Lessor upon request information relevant to compliance with this Agreement by Lessee or others.

XV. COMPLIANCE WITH LAW

15. Compliance with Law. Lessee shall conduct only lawful operations and activities at the Premises and at the Airport in accordance with all federal, state, county and local laws, ordinances,

regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended and shall use and occupy the Premises in conformance with all of the same. The provisions of this Agreement obligating Lessee to comply with applicable law do not deny Lessee such right, if any, as Lessee may have under applicable law to continue a use which was lawful (and permitted by this Agreement) when commenced. Lessee acknowledges that this Agreement does not constitute, and Lessor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to Lessee with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Lessee, the Premises, the Airport or Lessee's use of the Premises or Airport. Lessee acknowledges that all of Lessee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all laws and regulations applicable to Lessee. Lessee further agrees that this Agreement is not intended to diminish any performances to the City of Scottsdale that would be required of Lessee by law if this Agreement had been made between Lessee and a private citizen. Lessor has not relinquished any right of condemnation or eminent domain over the Premises. This Agreement does not impair the City of Scottsdale power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Lessee or the Premises. Without limiting in any way the generality of the foregoing, Lessee shall comply with all and each of the following:

15.1 Government Property Lease Excise Tax. Lessee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-1901 *et seq.* or similar laws in force from time to time that are lawfully assessed against the Premises or against Lessor or Lessee with respect to the Premises. Pursuant to A.R.S. § 42-1931, failure by Lessee to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Lessee of any interest in or right of occupancy of the Premises.

15.2 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Lessee shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description which during the term of this Agreement may be lawfully levied upon or assessed against Lessee, the Premises, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Premises and improvements and other property thereon, whether belonging to Lessor or Lessee. The preceding sentence does not apply to obligations of Lessee not related to the Premises. Lessee shall have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. Lessee shall pay all sales, transaction privilege, and similar taxes which it is legally obligated to pay.

15.3 Federal Agreements. This Agreement shall be subordinate to the provisions and requirements of any existing or future grant assurances and other agreements between the Lessor and the United States, relative to the development, operation or maintenance of the Airport.

[Note: Delete if not applicable.]

15.4 Based Aircraft. Lessee shall not allow to be based at the Premises any aircraft that has not been registered with the Airport to the extent required by applicable laws and regulations.

XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Lessee and any assignment shall be void and create in the assignee no rights except in strict compliance with the following:

16.1 Assignments Prohibited. Every assignment of Lessee's interest in the Premises or this Agreement or any of Lessee's rights or interests hereunder is prohibited unless Lessor's consent to the assignment is contained in this Agreement or Lessee first receives from Lessor a separate notice of Lessor's consent to the assignment. References in this Agreement to assignments by Lessee shall be deemed also to apply to all of the following transactions, circumstances and conditions:

16.1.1 Any voluntary or involuntary assignment, conveyance, transfer or sublease of the Premises or any interest therein or any rights under this Agreement.

16.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, deed of trust, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise (collectively "Liens").

16.1.3 The use, occupation, management, control or operation of the Premises or any part thereof by others.

16.1.4 Any transfer of membership interests, corporate stock or any other direct or indirect transfer of the majority of the ownership, management or control of Lessee except transfers caused by the death of a shareholder or other owner.

16.1.5 Any assignment by Lessee for the benefit of creditors, voluntary or involuntary.

16.1.6 Any bankruptcy or reorganization of Lessee not completely resolved in Lessee's favor within one hundred twenty (120) days after it is initiated.

16.1.7 The occurrence of any of the foregoing by operation of law or otherwise.

16.1.8 The occurrence of any of the foregoing with respect to any assignee or other successor to Lessee except for sublessees.

16.2 Effect of Assignment. No action or inaction by Lessor shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Lessee, or a release of Lessee from the further performance by Lessee of the provisions of this Agreement. The consent by Lessor to an assignment shall not relieve Lessee from obtaining Lessor's consent to any further assignment. No assignment shall release Lessee from any liability hereunder except that Lessee shall be released from future obligations under this Agreement in the event of a complete assignment of Lessee's entire interest made with Lessor's consent. This Agreement shall also run with the land and continue to be a burden upon the Premises and every interest therein in favor of Lessor.

16.3 Enforceability after Assignment. This Agreement shall control any conflict between this Agreement and the terms of any assignment. Upon execution of this Agreement, and upon each subsequent assignment, Lessee shall provide a complete copy of this Agreement and any amendments to each sublessee or other assignee.

16.4 Grounds for Refusal. No assignments of this Agreement are contemplated or bargained for except for those to which Lessor has given consent in this Agreement. Lessor has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment.

16.5 Form of Assignment. Any permitted assignment or subletting shall be by agreement in form and content acceptable to Lessor. Assignees other than sublessees shall assume this Agreement. In the event Lessor terminates this Agreement due to a default by Lessee, Lessor at Lessor's sole option may succeed to the position of Lessee as to any sublessee or assignee of Lessee without liability for any prior breaches or performances.

16.6 Employees. Lessee's hiring and discharging of employees shall not constitute a change of management amounting to an assignment of this Agreement by Lessee.

16.7 Liens Prohibited. Notwithstanding the prohibition on Liens, Lessee is permitted with Lessor's consent to impose a single mortgage or deed of trust (the "Primary Lien") upon Lessee's leasehold interest in the Premises under this Agreement to secure a loan obtained by Lessee to obtain funds for Lessee to use to acquire Lessee's interest under this Agreement and/or construct the Project.

16.8 Lien Payment. Lessee shall pay all Liens as the same become due, and in any event before any action is brought to enforce the Lien. Lessee agrees to pay, indemnify, defend and hold Lessor and the Premises free and harmless from all liability and against any and all Liens, together with all costs and expenses in connection therewith, including attorney's fees. Lessor shall have the right at any time to post and maintain on the Premises such notices, pay such amounts, file or record such notices, or take such other actions as Lessor may deem necessary to protect Lessor and its property interests against all Liens. Every Lien shall cover Lessee's entire leasehold interest in this Agreement and the Premises.

16.9 Lien Priorities. In no event shall any Lien (whether arising before, concurrent with, or after the date of this Agreement) cover, affect or have any priority higher than or equal to any of Lessor's rights in the Premises or under this Agreement at any time.

16.10 Lessor's Rights to Pay Lienholder. Prior to foreclosure, deed in lieu, or the conclusion of other enforcement of a Lien, Lessor shall have the right at any time to purchase any Lien, by payment to the holder of the Lien the amount of the unpaid debt, plus any accrued and unpaid interest.

16.11 Primary Permitted Lien. The Primary Lien is subject to the following provisions:

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16.11.1 Until the Project is completed, the Primary Lien shall not be cross collateralized or cross defaulted with any debt or lien related to property other than the Premises. Until the Project is completed, the Primary Lien shall cover no interests in any real property other than Lessee's interests in the Premises and the rents and profits under any permitted subleases.

16.11.2 The holder of the Primary Lien (the "Primary Lienholder") shall promptly give notice to Lessor of the creation of the Primary Lien and any modification, renewal, termination, assignment, release, default or enforcement of the Primary Lien, and any notices to Lessee related thereto. Such notices shall be accompanied by true copies of the Primary Lien or other correspondence or instruments pertaining to the notice. Primary Lienholder shall notify Lessor of the address to which notices to Primary Lienholder shall be sent.

16.11.3 The Primary Lien shall contain no provisions inconsistent with or purporting to alter in any way the provisions of this Agreement. This Agreement shall control any inconsistent terms or provisions in the Primary Lien or in any document of any description related to the Primary Lien.

16.11.4 Primary Lienholder shall have a limited right to cure deficiencies in Lessee's performance under this Agreement (the "Cure Right") as follows:

16.11.4.1 The Cure Right is that, in the event of an Event of Default:

16.11.4.1.1 Lessor shall not terminate this Agreement without first giving Primary Lienholder notice of the Event of Default; and

16.11.4.1.2 Upon Lessor's giving such notice, Primary Lienholder shall have an opportunity to cure the Event of Default as specifically described herein.

16.11.4.2 The Cure Right only applies to Events of Default that are capable of cure by Primary Lienholder within one hundred eighty (180) days after Lessor's notice to Primary Lienholder. In the event of an Event of Default that cannot be cured within that time period, Primary Lienholder and/or Lessee shall have the right to call for a meeting to consult with Lessor's city manager and/or aviation director to develop a plan for curing the Event of Default. Lessor's city manager and aviation director shall each have authority to consider such a plan and give notice on behalf of Lessor extending the time period for curing the particular Event of Default in accordance with the plan. Lessor has no obligation to approve any such plan.

16.11.4.3 If an event or circumstance occurs which will become an Event of Default with the passage of time or giving of notice or both, Lessor may elect to provide Primary Lienholder's notice of the Event of Default prior to, after, or simultaneously with any notice Lessor may give to Lessee, and prior to, after, or simultaneously with the expiration of any applicable cure or grace period.

16.11.4.4 Primary Lienholder may elect to exercise the Cure Right by giving Lessor notice (a "Cure Notice") of such election not later than forty-five (45) days after Lessor's notice to Primary Lienholder. Primary Lienholder's failure to timely give a Cure Notice shall be Primary Lienholder's rejection and waiver of the Cure Right. Primary Lienholder's giving of

a Cure Notice shall constitute Primary Lienholder's promise to Lessor that Primary Lienholder shall immediately undertake and diligently pursue to completion on Lessee's behalf all payments and performances necessary to cure an Event of Default and otherwise cause Lessee's performance to comply in all respects with the requirements of this Agreement. Each Cure Notice shall include payment of any and all amounts then payable to Lessor under this Agreement.

16.11.4.5 In the event Primary Lienholder exercises the Cure Right, Primary Lienholder shall immediately commence and thereafter diligently prosecute the cure to completion no later than thirty (30) days after Primary Lienholder's Cure Notice to Lessor. In the event of a cure that cannot be completed within thirty (30) days, Primary Lienholder shall complete the cure within the shortest period that may be possible, but in no event later than one hundred eighty (180) days after Primary Lienholder's Cure Notice exercising the Cure Right. In the case of a Lessee Insolvency, if the Premises are operating as required by this Agreement and all payments by Lessee are current and all other defaults are cured, then the one hundred eighty (180) day period specified in the preceding sentence shall be extended to eighteen (18) months to cure the Lessee Insolvency. Such extension applies only to the Lessee Insolvency.

16.11.5 If this Agreement is terminated due to rejection by a bankruptcy trustee for Lessee, then Primary Lienholder shall have a thirty (30) day period after such rejection to give notice to Lessor that Lessee elects to obtain from Lessor a new replacement lease. Primary Lienholder's rights and obligations under the replacement lease shall be the same as those applicable to Lessee at the time of the rejection. A default by Lessee under the Primary Lien shall not amount to a default by Lessee under this Agreement.

16.11.6 Until completion of the Project, the Primary Lien must be held by an FDIC insured financial institution having offices in Maricopa County, Arizona, a pension fund or insurance company authorized to do business in Arizona, or sophisticated investors qualified under federal securities law to purchase unregistered securities in private placements.

16.11.7 This Agreement's provisions relating to the Primary Lien are for the sole benefit of Lessor and Primary Lienholder, and are not for the benefit of Lessee.

16.11.8 Lessee shall immediately give notice to Lessor and Primary Lienholder of any notice Lessee may receive relating to this Agreement or to the Primary Lien.

16.11.9 Primary Lienholder shall immediately give notice to Lessor and Lessee of any notice Primary Lienholder may receive relating to this Agreement or to the Primary Lien.

16.11.10 The provisions of this Agreement permitting the Primary Lien shall apply to any subsequent refinancing of the Primary Lien so long as the following requirements are satisfied:

16.11.10.1 Any replacement Primary Lien must satisfy all requirements of this Agreement.

16.11.10.2 No new Primary Lien may be created while a Primary Lien exists or is of record.

16.11.10.3 Only one Primary Lien may exist or be of record at a time.

16.11.11 Primary Lienholder shall become personally liable to perform Lessee's obligations hereunder only if and when Primary Lienholder gives a Cure Notice, becomes the owner of all or part of the leasehold estate pursuant to judicial or non-judicial foreclosure, assignment or transfer in lieu of foreclosure or otherwise, or takes possession of all or part of the Premises. The occurrence or existence of any of the foregoing shall constitute an assumption by Primary Lienholder of Lessee's obligations under this Agreement.

16.12 Confirmation of Status. By notice to the other (a "Confirmation Request Notice"), either Lessor or Lessee (the "Requesting Party") may request that the other provide to the Requesting Party written confirmation of certain matters (an "Estoppel Certificate") as follows:

16.12.1 Lessee may give a Confirmation Request Notice only when a Primary Lien is being created or assigned, when Lessee's entire interest in the Premises is being assigned, or as otherwise reasonably necessary for Lessee's business purposes. Any Confirmation Notice by Lessee must meet the following additional requirements:

16.12.1.1 The Confirmation Request Notice shall be executed and joined in by the prospective Primary Lienholder, assignee of a Primary Lien, or assignee of Lessee's entire interest in the Premises (the "Confirmation Assignee").

16.12.1.2 The Confirmation Request Notice shall describe the proposed transaction between Lessee and the Confirmation Assignee.

16.12.1.3 The Confirmation Request Notice must include warranties and representations by the Confirmation Assignee that the matters to be confirmed are true to the best of its knowledge.

16.12.1.4 The Confirmation Request Notice must include warranties and representations by Lessee that the matters to be confirmed are true and that the information contained in the Confirmation Request Notice is complete and true.

16.12.1.5 If a Primary Lien is being created or assigned, the Confirmation Request Notice must warrant and represent that the proposed Primary Lienholder and its Lien qualify in every way for Primary Lien status under this Agreement.

16.12.2 The Confirmation Request Notice must specify the matters the other party is requested to confirm. The Confirmation Request Notice shall request only that the other party confirm whether or not one or more of the following matters are true, to the best of such other party's knowledge:

16.12.2.1 That this Agreement is in effect and has not been amended except as stated in the Confirmation Request Notice.

16.12.2.2 If Lessee is the Requesting Party, that an Event of Default by Lessee does not exist (except that Estoppel Certificates by Lessor shall exclude matters of zoning

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or other regulatory compliance). If Lessor is the Requesting Party, that Lessor has performed its obligations and is in compliance with this Agreement.

16.12.2.3 If a Primary Lien is being created, that upon Primary Lienholder's providing to Lessor copies of the recorded instrument creating Primary Lienholder's Primary Lien and a recorded instrument releasing any prior Primary Lien, Lessor will acknowledge Primary Lienholder as the Primary Lienholder under this Agreement.

16.12.2.4 If Lessee is the Requesting Party, that Lessor consents to the proposed transaction between Lessee and the Confirmation Assignee.

16.12.2.5 That Rent has been paid through the date set forth in the Confirmation Request Notice.

16.12.3 The other party shall provide the Estoppel Certificate to the Requesting Party not less than thirty (30) days after a proper Confirmation Request Notice.

16.13 Assignment Payment. In addition to all other Rent payable hereunder, in the event of any assignment (including without limitation a Lien enforcement) which transfers possession of more than 30% of the interior building space of the Premises or has a duration of five (5) or more years, Lessee shall pay to Lessor the amount of Ten Thousand Dollars (\$10,000.00). Lessor's contract administrator shall have authority to waive or reduce such payment in the event of an assignment to an affiliate of Lessee. Lessee shall pay to Lessor the sum of One Thousand Five Hundred Dollars (\$1,500.00) as a fee for legal and administrative expenses related to creation of a Primary Lien or any assignment or request for consent to an assignment. Lessee shall pay to Lessor the sum of Seven Hundred Fifty Dollars (\$750.00) as a fee for legal and administrative expenses related to any request for an Estoppel Certificate.

[Note: Delete if not applicable.]

16.14 Aircraft Storage Agreement. If an aircraft is to be stored or based at the Premises or the Airport more than fourteen (14) days, then Lessor's consent to an assignment is not effective until an Aircraft Storage Agreement is in effect between the City of Scottsdale and the aircraft owner.

16.15 Approved Assignments. Lessee shall attach to each assignment not described in this paragraph, a copy of Lessor's notice to Lessee of Lessor's consent to the assignment. No consent by Lessor to an assignment shall be effective unless and until Lessee receives notice of Lessor's consent pursuant to this Agreement. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any Estoppel Certificate or other documents relating to an Assignment. Lessor hereby consents to the following assignments:

16.15.1 The creation of a Primary Lien that meets all of the requirements of this Agreement.

16.15.2 Lessee's granting to its customers in the ordinary course of its business rights of incidental use of small lockers at the Premises for temporary storage of miscellaneous

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personalty provided such rights are terminable by Lessee upon not more than thirty (30) days notice.

16.15.3 After the Project is completed, Lessee's complete assignment of all of Lessee's rights and Interests in the Premises and this Agreement to a single assignee that meets the following requirements, as determined by Lessor in Lessor's reasonable discretion (a "Qualified Operator"):

16.15.4 The assignee must provide to Lessor a written assumption of Lessee's obligations under this Agreement.

16.15.5 The assignee must have the management and financial capacity and other resources necessary to successfully perform under this Agreement.

16.15.6 The assignee or its core management team must have substantial recent experience in successfully operating a first-class, operation comparable to the Premises.

16.15.7 The assignee must have active, involved executive, managerial and production level leadership staff with substantial recent experience in successfully operating a first-class, operation comparable to the Premises.

16.15.8 The assignee shall provide to Lessor such information and materials (including presentations) as Lessor may reasonably request to confirm the assignee's qualifications and to assist Lessor to make such determination. Without limitation, Lessor may require the assignee to provide an information package containing all of the information required of Lessee in connection with the original granting of this Agreement. Lessor may take into account any such information and factors in determining the assignee's qualifications.

16.15.9 The sale of the Project at the foreclosure (or trustee's sale or similar enforcement) of the Primary Lien to the Primary Lienholder or to a foreclosure purchaser who is a Qualified Operator or the transfer of the Primary Lien to an entity which is and remains a wholly-owned subsidiary of the Primary Lienholder.

[Note: Delete if not applicable.]

16.15.10 Subleases by Lessee in the ordinary course of business to occupants of hangar space for individual aircraft after the Project is completed so long as in the ordinary course of Lessee's business no rent (excluding amounts Lessee uses for tenant improvements) shall be prepaid more than twelve (12) months.

[Note: Delete if not applicable.]

16.15.11 Subleases by Lessee in the ordinary course of business to occupants of commercial office space after the Project is completed so long as no rent (excluding amounts Lessee uses for tenant improvements) is prepaid more than twelve (12) months.

16.16 Assignment by Lessor. Lessor's interests in this Agreement shall be automatically deemed to be assigned to and assumed by any person who acquires fee title to the Premises. Upon any such assignment, Lessor's liability with regard to this Agreement shall terminate.

XVII. MISCELLANEOUS

17. Miscellaneous.

17.1 Severability. If any provision of this Agreement is declared void or defective, that declaration shall not affect the validity or any other provision of this Agreement.

17.2 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties. Amendments shall require Primary Lienholder consent to the amendment which consent shall not be unreasonably withheld or delayed.

17.3 Conflicts of Interest. No member, official or employee of Lessor shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

17.4 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

17.5 Nonliability of Lessor Officials and Employees. No member, official, representative or employee of Lessor shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Lessor or for any amount which may become due to any party or successor, or with respect to any obligation of Lessor or otherwise under the terms of this Agreement or related to this Agreement.

17.6 Notices. Notices hereunder shall be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Lessor: Scottsdale Aviation Director
 15000 N. Airport Dr., Suite 200
 Scottsdale, AZ 85260

City of Scottsdale
3939 Drinkwater Blvd.
Scottsdale, AZ 85251
Attn: City Attorney

If to Lessee: _____

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Copies to: Primary Lienholder

By notice from time to time, a party or Primary Lienholder may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. After the completion of the Project, notices to Lessee may also be hand delivered to Lessee's management office at the Premises. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

17.7 Time of Essence. Time is of the essence of each and every provision of this Agreement.

17.8 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Premises.

17.9 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Lessee.

17.10 Lessee Payments Cumulative. All amounts payable by Lessee to Lessor hereunder or under any tax, assessment or other existing or future ordinance or other law of City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other by Lessee in any manner.

17.11 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

17.12 No Third Party Beneficiaries. Except for the limited provisions expressly stated to be for the benefit of a Primary Lienholder, no person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Lessor shall have no liability to third parties for any approval of plans, Lessee's construction of improvements, Lessee's negligence, Lessee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Lessee), or otherwise as a result of the existence of this Agreement.

17.13 Exhibits. All attached Exhibits, which are specifically referenced in this Agreement, are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.14 Attorneys' Fees. In the event any action or suit or proceeding is brought by Lessor to collect the Rent due or to become due hereunder or any portion hereof or to take possession of

the Premises or to enforce compliance with this Agreement or for Lessee's failure to observe any of the covenants of this Agreement or to vindicate or exercise any of Lessor's rights or remedies hereunder, Lessee agrees to pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

17.15 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County.

17.16 Approvals and Inspections. All approvals, reviews and inspections by Lessor under this Agreement or otherwise are for Lessor's sole benefit and not for the benefit of Lessee, its contractors, engineers or other consultants or agents, or any other person.

17.17 Recording. Within ten (10) days after the date of this Agreement, Lessee shall cause this Agreement to be recorded in the office of the Maricopa County Recorder.

17.18 Statutory Cancellation Right. In addition to its other rights hereunder, Lessor shall have the rights specified in A.R.S. § 38-511.

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EXECUTED as of the date first given above.

LESSEE: _____,
a _____

By: _____

Its: _____

LESSOR: CITY OF SCOTTSDALE,
an Arizona municipal corporation

By: _____
Mary Manross, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

Deborah W. Robberson, City Attorney

Scott Gray, Aviation Director

Pauline Hecker, Risk Management Director

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STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____, _____ of _____, a _____.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Mary Manross, Mayor of the City of Scottsdale an Arizona municipal corporation.

Notary Public

My Commission Expires:

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	C	Legal description for lease land.
B	E	Drawing of premises to be used by Lessee indicating all major features of Project to be constructed.
C	6.13.2.2	Standards for letter of credit.
D	14.6	Form of monthly report

[Note: All Exhibits must be labeled, formatted for recording, and leave at least one half inch clear space along all margins. All fonts used in Exhibits (including labels and notes in site plans and other graphics) must be at least 10 point type.]

[Note: Exhibits are limited to 8.5" by 11". Do not attach reduced copies of site plans and other graphics and large sheet Exhibits. Instead, prepare a multi-page Exhibit consisting of several 8.5" by 11" sheets, each containing a full size copy of a portion of the original full sheet. Prepare as many sets of sheets as are necessary to depict the entire Exhibit. Each set of sheets should begin with a sheet indicating how the remaining sheets are assembled as a mosaic to recreate the original large sheet.]

[Note: This table is not part of the document.]

Standards for Letters of Credit

In addition to any other requirements imposed upon a letter of credit (the "Letter of Credit") issued pursuant to this Agreement, each Letter of Credit shall meet and be governed by the following additional standards and requirements:

1. General Requirements. The Letter of Credit must:
 - 1.1 Be clean, unconditional, and irrevocable.
 - 1.2 Be payable to Lessor upon demand.
 - 1.3 Be subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 190.
 - 1.4 Be conditioned for payment solely upon presentation of the Letter of Credit and a sight draft.
 - 1.5 Be transferable one or more times by Lessor without the consent of Lessee or the Issuer.
- 2 Letter of Credit Fees. Lessee shall pay upon Lessor's demand, as additional Rent, any and all costs or fees charged in connection with the Construction Letter of Credit, including without limitation, those that arise due to:
 - 2.1 Landlord's sale or transfer of all or a portion of the Premises [or the Airport Site].
 - 2.2 The addition, deletion, or modification of any beneficiaries under the Letter of Credit.
- 3 Issuing Bank. The Letter of Credit shall meet all of the following requirements:
 - 3.1 The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona.
 - 3.2 The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust company satisfactory to Lessor.
 - 3.3 The issuer shall have banking offices at which the Letter of Credit may be drawn upon in Maricopa County, Arizona.
 - 3.4 The issuer shall have a net worth of not less than \$1 billion.
- 4 Expiration of Letter of Credit. The Letter of Credit shall expire not earlier than 12 months after the date it is delivered to Lessor. The Letter of Credit shall provide that it shall be automatically renewed for successive 12 month periods through a date which is not earlier than 60 days after the time provided herein for completion of construction, or any

Exhibit "C"
Page 1 of 2

renewal or extension thereof, unless written notice of nonrenewal has been given by the issuing bank to Landlord not less than 60 days prior to the expiration of the current period. If the issuing bank does not renew the Letter of Credit, and if Lessee does not deliver a substitute Letter of Credit at least 30 days prior to the expiration of the current period, then, in addition to its other rights under this Agreement, Lessor shall have the right to draw on the existing Letter of Credit.

5 Draws. Lessor may draw upon the Letter of Credit as follows:

- 5.1 Lessor may use, apply, or retain the proceeds of the Letter of Credit to the same extent that Lessor may use, apply, or retain any other Lessee funds or property to which Lessor may have access.
- 5.2 Lessor may draw on the Letter of Credit, in whole or in part, from time to time, at Lessor's election.
- 5.3 Within thirty (30) days after Lessor gives Lessee notice that Lessor has drawn down the Letter of Credit, Lessee shall restore all amounts drawn by Lessor, or substitute cash security instead.
- 5.4 In the event the required amount of the Letter of Credit increases from time to time, Lessee shall, from time to time, on or before the date of the increase, deliver to Lessor an additional letter of credit in the amount of such increase, or cause the existing Letter of Credit held by Lessor to be amended to increase its amount.
- 5.5 Lessor may draw upon the Letter of Credit as otherwise permitted by this Agreement.

6 Cooperation by Lessee. Lessee shall promptly execute and deliver to Lessor any and all modifications, amendments, and replacements of the Letter of Credit, as Lessor may reasonably request.

[Note: Edit as applicable.]

FIXED BASE OPERATOR LEASE

MONTHLY REPORT ITEMS

1. For each portion of the Premises:
 - 1.1 The name of the user or occupant.
 - 1.2 The name and date of the agreement permitting such use or occupancy.
 - 1.3 The names of the parties to such agreement.
 - 1.4 The suite number, location and square footage of the space used or occupied.
 - 1.5 The name and business phone number of the user or occupant and the name and after hours phone number of a responsible representative for such user or occupant.
 - 1.6 The business name and type of business activity being conducted.
2. For any new use or occupancy commenced, a complete copy of the executed agreement permitting such use or occupancy, together with copies of all permits, licenses or similar permissions, registrations or agreements related to such use or occupancy.

[Note: Delete if not applicable.]

3. For each portion of the Premises capable of aircraft storage:
 - 3.1 The number of aircraft based at such portion of the Premises.
 - 3.2 For each aircraft based at such portion of the Premises:
 - 3.2.1 Make, model, year and registration number.
 - 3.2.2 Lessor's name, address and telephone number.

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ORDINANCE NO. 1254

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, RELATING TO SCOTTSDALE MUNICIPAL AIRPORT, REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, IN THE VICINITY OF SCOTTSDALE MUNICIPAL AIRPORT BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES OF SUCH ZONES, REFERRING TO THE SCOTTSDALE MUNICIPAL AIRPORT ZONE HEIGHT MAP WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE, PROVIDING FOR ENFORCEMENT, ESTABLISHING AN AIRPORT BOARD OF ADJUSTMENT, IMPOSING PENALTIES, AND DECLARING AN EMERGENCY.

BE IT ORDAINED, by the Council of the City of Scottsdale, Arizona, as follows:

Section 1. An ordinance to be known as the Scottsdale Municipal Airport Zone Height Ordinance is hereby adopted to read:

Sec. I. [Findings.]

This ordinance is adopted pursuant to the authority conferred by the Scottsdale City Charter and article 2, chapter 3, title 2 of the Arizona Revised Statutes [A.R.S. § 2-301 et seq.]. It is hereby found that an obstruction has the potential for endangering the lives and property of users of Scottsdale Municipal Airport, and property or occupants of land in its vicinity; that an obstruction may affect existing and future instrument approach minimums of Scottsdale Municipal Airport; and that an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of Scottsdale Municipal Airport and the public investment therein. Accordingly, it is declared:

- (1) That the creation or establishment of a hazardous obstruction is a public nuisance and may injure the region served by Scottsdale Municipal Airport;
- (2) That it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented.

It is hereby ordained by the City Council of Scottsdale, Arizona, as follows:

Sec. II. Definitions.

As used in this ordinance, unless the context otherwise requires:

1. Airport means Scottsdale Municipal Airport.
2. Airport elevation [means] one thousand five hundred nine (1,509) feet above mean sea level.
3. Approach surface [means] a surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in section IV of this ordinance. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.
4. Approach, transitional, horizontal, and conical zones—These zones are set forth in section III of this ordinance.
5. Airport board of adjustment [means] a board consisting of five (5) members appointed by the City Council of the City of Scottsdale as provided for in article 2, chapter 3, title 2 of the Arizona Revised Statutes [A.R.S. § 2-301 et seq.].
6. Conical surface [means] a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of four thousand (4,000) feet.

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7. Hazard to air navigation [means] an obstruction determined by the Federal Aviation Administration to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
8. Height—For the purpose of determining the height limits in all zones set forth in this ordinance and shown on zone height map, which is a part of this ordinance, the datum shall be mean sea level elevation unless otherwise specified.
9. Horizontal surface [means] a horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.
10. Nonconforming height [means] any lawful pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this ordinance or an amendment thereto.
11. Obstruction [means] any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in section IV of this ordinance.
12. Person [means] an individual, firm, partnership, corporation, company, association, joint stock association, or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.
13. Primary surface [means] a surface longitudinally centered on a runway. The primary surface extends two hundred (200) feet beyond each end of that runway. The width of the primary surface is set forth in section III of this ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
14. Runway [means] a defined area on an airport prepared for landing and takeoff of aircraft along its length.
15. Structure [means] an object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.
16. Transitional surfaces—These surfaces extend outward at ninety-degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces.
17. Tree [means] any object of natural growth.
18. Utility runway [means] a runway that is constructed for an intended to be used by propeller driven aircraft of twelve thousand five hundred (12,500) pounds maximum gross weight and less.
19. Visual runway [means] a runway intended solely for the operation of aircraft using visual approach procedures.

Sec. III. Airport zone heights.

In order to carry out the provisions of this ordinance, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Scottsdale Municipal Airport. Such zones are shown on the Scottsdale Municipal Airport Zone Height Map, which is attached hereto and by reference made a part hereof. An area located in more than one (1) of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

1. Runway larger than utility visual approach zone. The inner edge of this approach zone coincides with the width of the primary surface and is five hundred (500) feet wide. The approach zone expands outward uniformly to a width of one thousand five hundred (1,500) feet at a horizontal distance of five thousand (5,000) feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
2. Transitional zones. The transitional zones are the areas beneath the transitional surfaces.

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3. Horizontal zone. The horizontal zone is established by swinging arcs of five thousand (5,000) feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.
4. Conical zone. The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a horizontal distance of four thousand (4,000) feet.

Sec. IV. Airport zone height limitations.

Except as otherwise provided in this ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this ordinance to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

1. Runway larger than utility visual approach zone. Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of five thousand (5,000) feet along the extended runway centerline.
2. Transitional zones. Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of one hundred fifty (150) feet above the airport elevation which is one thousand five hundred nine (1,509) feet above mean sea level.
3. Horizontal zone. Established at one hundred fifty (150) feet above the airport elevation or at a height of one thousand six hundred fifty-nine (1,659) feet above mean sea level.
4. Conical zone. Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at one hundred fifty (150) feet above the airport elevation and extending to a height of three hundred fifty (350) feet above the airport elevation.
5. Excepted height limitations. Nothing in this ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to twenty (20) feet above the surface of the land.
6. [Compliance with zoning ordinance.] Nothing in this ordinance shall be construed as permitting the construction or maintenance of a structure which exceeds the maximum height permitted in article 5, City of Scottsdale Ordinance 455.

Sec. V. Additional restrictions.

Notwithstanding any other provisions of this ordinance, no use may be made of land or water within any zone established by this ordinance in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

Sec. VI. Nonconforming heights.

1. Regulations not retroactive. The regulations prescribed by this ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this ordinance, or otherwise interfere with the continuance of a nonconforming height. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this ordinance.

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2. Marking and lighting. Notwithstanding the preceding provision of this section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the airport director to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Scottsdale.

Sec. VII. Notification.

Each person who proposes any of the following construction or alterations shall notify the Federal Aviation Administration (FAA) in the form and manner prescribed herein:

1. Any construction or alteration of more than two hundred (200) feet in height above the ground level at its site.
2. Any construction or alteration of greater height than an imaginary surface extending outward and upward 100 to 1 for a horizontal distance of twenty thousand (20,000) feet from the nearest point of the nearest runway.
3. Any highway, railroad, or other traverse way for mobile objects of a height which, if adjusted upward seventeen (17) feet for an interstate highway that is part of the national system of military and interstate highways where crossings are designed for a minimum of seventeen (17) feet vertical distance, fifteen (15) feet for any other public roadway, ten (10) feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, twenty-three (23) feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of subparagraph (1) or (2) above.
4. Any construction or alteration on the Scottsdale Municipal Airport. No person is required to notify the FAA for any of the following construction or alteration:
 - a. Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely effect safety in air navigation.
 - b. Any antenna structure of twenty (20) feet or less in height except one that would increase the height of another antenna structure.
 - c. Any air navigation facility, airport visual approach or landing aid, aircraft arresting device or meteorological device of a type approved by the FAA.

Each person who is required to notify the FAA under this ordinance shall send one (1) executed set (four copies) of FAA Form 7460-1 Notice of Proposed Construction or Alteration to the FAA Western Regional Office. Copies of FAA Form 7460-1 may be obtained from the regional office or the office of the airport director.

1. The notice required under FAR [FAA] part 77 and this ordinance must be submitted at least thirty (30) days before the earlier of the following dates:
 - a. The date the proposed construction or alteration is to begin.
 - b. The date an application for a construction permit is to be filed.

Sec. VIII. Permits.

1. Future uses. No structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a height permit therefore shall have been applied for and granted. Each application for a building permit within any of the zones created herein shall indicate the purpose for which the permit is desired, with sufficient particularity to allow it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be

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granted. No permit for a use inconsistent with the provisions of this ordinance shall be granted unless a variance has been approved in accordance with section VIII, 4. Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this ordinance except as set forth in section IV, 5.

2. Existing uses. No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this ordinance or any amendments thereto or than it is when the application for a permit is made.
3. Nonconforming uses abandoned or destroyed. If at any time any building or land in existence or maintained at the time of the adoption of this ordinance, which does not conform to the regulations for the district in which it is located, shall be destroyed by fire, explosion, act of God or act of the public enemy to the extent of fifty (50) percent of its value as determined by three (3) competent appraisers, then and without further action by the city council the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations specified by this ordinance for the district in which such land and building are located.
4. Variances. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this ordinance, may apply to the airport board of adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this ordinance.
5. Obstruction marking and lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this ordinance, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary.

Sec. IX. Enforcement.

It shall be the duty of the airport director to administer and enforce the regulations prescribed herein. Applications for height permits and variances shall be made to the airport director. Application for variance by the airport board of adjustment shall be forthwith transmitted by the airport director with his recommendation to the airport board of adjustment.

Sec. X. Airport board of adjustment.

1. There is hereby created an airport board of adjustment to have and exercise the following powers:
 - (1) To hear and decide appeals from any order, requirement, decision, or determination made by the airport director, in the enforcement of this ordinance;
 - (2) To hear requests for variances.
2. The airport board of adjustment shall consist of five (5) members of the City of Scottsdale Airport Advisory Commission and shall be appointed by and serve at the pleasure of the Scottsdale City Council. The members shall serve three-year terms unless sooner removed by the council with or without cause.
3. The airport board of adjustment shall adopt rules for its governance and in harmony with the provisions of this ordinance. Meetings of the airport board of adjustment shall be held at the call of the chairperson and at such other times as the airport board of adjustment may

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determine. The chairperson or, in the absence of the chairperson, the acting chairperson may administer oaths and compel the attendance of witnesses. All hearings of the airport board of adjustment shall be public. The airport board of adjustment shall keep minutes of its proceedings showing the vote of each member upon each question; or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official action, all of which shall immediately be filed in the office of city clerk and on due cause shown.

4. The airport board of adjustment shall make findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order, requirement, decision, or determination which comes before it under the provisions of this ordinance.
5. The concurring vote of a majority of the members of the airport board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the airport director, or to decide in favor of the applicant or any matter upon which it is required to pass under this ordinance or to grant a variance.

Sec. XI. Appeals.

1. Any person aggrieved, or any taxpayer affected, by any decision of the airport director, made in the administration of the ordinance, may appeal to the airport board of adjustment.
2. All appeals hereunder must be taken within a reasonable time as provided by the rules of the airport board of adjustment, by filing with airport director, a notice of appeal specifying the grounds thereof. The airport director shall forthwith transmit to the airport board of adjustment all the papers constituting the record upon which the action appealed from was taken.
3. An appeal shall stay all proceedings.
4. The airport board of adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
5. The airport board of adjustment may, in conformity with the provisions of this ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination as may be appropriate under the circumstances.

Sec. XII. Judicial review.

Any person aggrieved, or any taxpayer affected, by any decision of the airport board of adjustment, may appeal to the superior court as provided in section 2-330 of the Arizona Revised Statutes.

Sec. XIII. Penalties.

Each violation of this ordinance or of any regulation, order or ruling promulgated hereunder shall constitute a class 3 misdemeanor. Each day a violation continues to exist shall constitute a separate offense.

Sec. XIV. Conflicting regulations.

Where there exists a conflict between any of the regulations or limitations prescribed in this ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

Sec. XV. Citizen review process.

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Any airport zoning map amendment or any text amendment to the airport zoning ordinance, appendix A, shall follow the citizen review process prescribed in appendix B, Section 1.305 of the zoning ordinance.

(Ord. No. 3332, § 2, 7-11-00)

Sec. XVI. Severability.

If any of the provisions of this ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

Section 2. Whereas, the immediate operation of the provisions of this ordinance is necessary for the preservation of the public health, public safety, and general welfare, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage by the City Council of Scottsdale, Arizona and publication and posting as required by law. Adopted by the City Council of Scottsdale, Arizona this 5th day of February, 1980.

Mayor

ATTEST:

City Clerk

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MODIFIED INDUSTRIAL PARK (I-1) ZONING USES TO ILLUSTRATE SAMPLE ALLOWED USES ON SOUTH THUNDERBIRD PARCEL

The South Thunderbird parcel at Scottsdale Airport is zoned I-1, however all the specified uses included with I-1 zoning will not be compatible with the location of this parcel, particularly since the parcel is located directly in line with Scottsdale Airport's runway. Hundreds of arrivals and departures will overfly this parcel on a daily basis; therefore, aircraft noise issues must be considered in this parcel's development. Additionally, deed restrictions limit certain retail uses. The following list of I-1 zoning uses is modified to indicate by strikeout those uses that would be considered incompatible with the parcel location and deed restrictions.

5.1800 (I-1) INDUSTRIAL PARK DISTRICT

s:

- Sec.5.1801 Purpose.**
- Sec.5.1802 Approvals required.**
- Sec.5.1803 Use regulations.**
- Sec.5.1804 Property development standards.**
- Sec.5.1805 Off-street parking.**
- Sec.5.1806 Signs.**

5.1801 Purpose.

The I-1 district is intended to provide space for manufacturing, processing, research and development, municipal airport and aeronautical activities, and complementary wholesale, warehouse, and office operations. This district permits a broad range of uses to take place within buildings or behind solid masonry walls and promotes the development of employment and aeronautical activities in an attractive, landscaped industrial park.

(Ord. No. 1852, § 1, 11-5-85; Ord. No. 3274, § 1, 12-7-99)

5.1802 Approvals required.

No structure or building shall be built or remodeled upon land in the I-1 district until Development Review Board approval has been obtained as outlined in article I, section 1.900 hereof.

(Ord. No. 1852, § 1, 11-5-85; Ord. No. 3225, § 1, 5-4-99)

5.1803 Use regulations.

The uses allowed in the I-1 district are generally those industrial office, laboratory, manufacturing, warehousing, wholesaling, and aeronautical uses. Manufacturing, processing, servicing, warehousing, cleaning and testing shall take place entirely within completely enclosed

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buildings, shall not create any offensive noise, vibration, smoke, dust, odor, heat, glare, fumes, or electrical interference, and shall not generate excessive truck traffic. Outdoor storage shall take place behind solid masonry walls.

A. *Permitted uses.*

1. Aeronautical activities.
 - a. Municipal airports, as defined in Chapter 5 of the Scottsdale Revised Code, and associated on-airport supporting uses.
 - b. Off-airport aeronautical activities, limited to those authorized by and subject to compliance with all applicable definitions, qualifications, minimum operating standards, rules and regulations set forth in or established pursuant to Chapter 5 of the Scottsdale Revised Code.
2. Business and professional offices.
3. Research and development laboratories and offices.
4. Manufacturing and processing.
 - a. Bakery.
 - b. Blueprinting, printing, lithography.
 - c. Cosmetics compounding.
 - d. Electronic assembly.
 - e. Electronic component manufacturing.
 - f. Fabric assembling (include fur, leather, textiles, etc.).
 - g. Glass assembling.
 - h. Garment manufacturing.
 - i. Instrument manufacturing.
 - j. Jewelry manufacturing.
 - k. Machine shops.
 - l. Motion picture production.
 - m. Musical instruments, games, or toy manufacturing.
 - n. Ornamental metal working.
 - o. Pharmaceuticals compounding.

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- p. Plastics assembling.
 - q. Rubber assembling.
 - r. Sheet metal assembling or fabricating.
 - s. Sign manufacturing.
 - t. Solar equipment assembling or manufacturing.
 - u. Wood assembling (limited to finished products).
- 5. Branch post office.
 - 6. Broadcasting station or studio, excluding sending or receiving tower.
 - 7. Contractor, general or subcontractor.
 - 8. Emissions testing facility.
 - 9. ~~Furniture store.~~
 - 10. Gymnasium (limited to gymnastics training).
 - 11. Municipal uses.
 - 12. Wholesale or warehouse operations.
 - 13. ~~Churches and places of worship (temporary five (5) years).~~
 - 14. ~~Day care center, if the drop off or outdoor play area is more than one hundred (100) feet from a residential district.~~
 - 15. ~~Wireless communications facilities; Types 1, 2, and 3, subject to the requirements of Sections 1.906, 3.100 and 7.200.~~
 - 16. ~~Retail sales directly related to but clearly incidental to a primary manufacturing, assembly, or contractor use provided the retail sales area does not exceed either ten (10) percent of the gross floor area of the primary use or one thousand (1,000) square feet, whichever is less. Retail sales for the purpose of the I-1 section of the zoning ordinance shall be defined as transactions involving goods purchased by the ultimate consumer for personal or household use.~~
 - 17. Unoccupied recreational vehicle storage which is not adjacent to any residential district (see Section 5.1803.B.27 for unoccupied recreational vehicle storage which is adjacent to any residential district).

B. *Uses subject to a conditional use permit.*

- 1. Antique, rare or unusual auto restoration.

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2. Auction gallery.
3. Automobile and boat assembly and reassembly, excluding general repairs and maintenance.
4. Bank. No use permit application for banks or financial institutions shall be granted unless the following conditions exist: The use shall be compatible with the I-1 development and/or abutting residential development. The use shall be primarily to serve the needs of the industrial park and shall be located accordingly. The use shall not be detrimental to the surrounding area due to: Increased automobile traffic, noise generated from within the site, character of proposed building.
5. Beverage bottling.
6. Bulk cleaning and laundry.
7. Ceramics manufacturing.
8. Cosmetics manufacturing.
9. ~~Day care center, if the drop off or outdoor play area is within one hundred (100) feet from a residential district. No use permit for this use shall be granted unless the conditions enumerated in 1.403 and the following conditions exist:~~
 - a. ~~The use shall be compatible in scale, mass and architecture with the I-1 development and any abutting residential development.~~
 - b. ~~Substantial I-1 development shall have occurred in the immediate area so as to provide a localized demand for the use.~~
 - c. ~~Building orientation and access to the site shall be directed to interior local industrial streets.~~
 - d. ~~Site plan design shall minimize vehicular conflicts between industrial/commercial uses and day care center patrons.~~
10. ~~Delicatessen. No use permit application for a delicatessen shall be granted unless the following conditions exist: The use shall be primarily to serve the needs of the industrial park and shall be located accordingly. The use shall not exceed two hundred (200) square feet of public floor area and shall not occur in a building wherein the delicatessen would be the sole or primary use. Delicatessen for the purpose of the I-1 section of the zoning ordinance shall exclude retail sales of grocery items or alcoholic beverages and shall provide no indoor or outdoor tables for dining.~~
11. Equipment storage.
12. Food processing and preparation, excluding slaughtering and fat rendering.

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13. Furniture manufacturing or refinishing.
14. Health studio. No use permit application for a health studio shall be granted unless the following conditions exist:
 - a. The use shall be compatible with I-1 development and/or any abutting residential development. The use shall be primarily to serve the needs of the industrial park and shall be located accordingly. The use shall not be detrimental to the surrounding area due to: Increased automobile traffic, noise generated from within the site, character of proposed building.
15. Ice plant.
16. Off-airport heliport, subject to compliance with all applicable definitions, qualifications, minimum operating standards, rules, and regulations set forth in or established pursuant to Chapter 5 of the Scottsdale Revised Code.
17. ~~Wireless communications facilities; type 4, subject to requirements of sections 1.400, 3.100 and 7.200.~~
18. Pharmaceuticals manufacturing.
19. Plastics manufacturing.
20. Plating or replating.
21. Pottery manufacturing.
22. Public utility service yard.
23. ~~Restaurant. No use permit application for a restaurant shall be granted unless the following conditions exist:~~
 - a. ~~The use shall be compatible with I-1 development and/or any abutting residential development. The use shall be primarily to serve the needs of the industrial park and shall be located accordingly. The use shall not be detrimental to the surrounding area due to: Increased automobile traffic, noise generated from within the site, character of the proposed building.~~
24. ~~Private and charter school having no room regularly used for housing or sleeping overnight. No conditional use permit application for a proposed private and charter school shall be deemed complete unless the zoning administrator has determined that the proposed private and charter school, if established, would not be located within the 60 DNL, or higher, noise contour, as shown in the "general plan and zoning map" located in the current Scottsdale Airport Noise Compatibility Plan, including any amendments to that plan. Subject to development review board approval and compliance with standards including, but not limited to, the following as well as those otherwise required in the district.~~
- 25.

RFP, SOUTH THUNDERBIRD PARCEL

26. Unoccupied recreational vehicle storage adjacent to any residential district. No use permit shall be granted for unoccupied recreational vehicle storage which is adjacent to any residential district unless the following conditions have been satisfied:

a. The site plan shall demonstrate that:

A wall and/or landscaping screens the unoccupied recreational vehicle storage from any residential district.

b. The applicant has provided a written lighting plan which addresses exterior lighting on the property, if provided, in accordance with Section 7.600 of the zoning ordinance. The lighting plan shall demonstrate that proposed exterior lighting does not direct light upon any adjacent property.

c. The applicant has provided any additional information required by city staff in order to evaluate the impacts of the proposed use upon the area.

(Ord. No. 1852, § 1, 11-5-85; Ord. No. 1905, § 1, 9-2-86; Ord. No. 1927, § 1, 1-20-87; Ord. No. 2258, § 1, 7-18-89; Ord. No. 2394, § 1, 9-16-91; Ord. No. 2395, § 1, 9-16-91; Ord. No. 2430, § 1, 1-21-92; Ord. No. 2606, § 1, 11-2-93; Ord. No. 2654, § 1, 4-19-94; Ord. No. 2831, § 1, 9-19-95; Ord. No. 2858, § 1, 12-5-95; Ord. No. 2876, § 1, 2-6-96; Ord. No. 3048, § 2, 10-7-97; Ord. No. 3103, § 1, 1-6-98; Ord. No. 3225, § 1, 5-4-99; Ord. No. 3274, § 1, 12-7-99; Ord. No. 3493, § 1, 3-4-03; Ord. No. 3488, § 1(Exh. 1), 1-21-03)

Editor's Note: The arabic numbers for uses in paragraphs A and B above were not present in Ord. Nos. 1852, 1905 and 1927. As they were present prior to enactment of Ord. No. 1852, 1905 and 1927 and as sub-subparagraphs are numbered as if arabic numbers were assigned to subparagraphs and references are made to subparagraphs with arabic numbers (see B, 13, b above), the arabic numbers have been editorially supplied.

5.1804 Property development standards.

The following property development standards shall apply to all land and buildings in the I-1 district:

A. *Floor area ratio.* In no case shall the gross floor area of a structure exceed the amount equal to six-tenths multiplied by net lot area in square feet.

B. *Volume ratio.* In no case shall the volume of a structure exceed the product of the net lot area in square feet multiplied by nine (9) feet.

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C. *Open space requirement.*

1. In no case shall the open space requirement be less than ten (10) percent of the total lot area of zero (0) feet to twelve (12) feet of height, plus four-tenths percent of the total site for each foot of height above twelve (12) feet.
2. The amount of open space required on a lot may be reduced in direct proportion to the amount of net lot area included in a taxilane safety area. The amount of open space required on a lot may also be reduced in direct proportion to the amount of aircraft staging area provided on the lot. In no case shall the amount of taxilane safety area and/or aircraft staging area reduce, or provide for a reduction of, more than fifty (50) percent of the required open space.
3. Open space required under this section shall be exclusive of parking lot landscaping required under the provisions of article IX of this ordinance.

D. *Building height.* No building shall exceed thirty-six (36) feet in height except as otherwise provided in article VII.

E. *Lot coverage.* The aggregate area of the building(s) shall not occupy more than fifty (50) percent of the total area of the lot.

F. *Yards.*

1. **Front Yard.** No part of the building or accessory structure shall be located closer than fifty (50) feet to any street. Parking may occur in the required front yard as provided in Section 10.402.C.1.
2. **Side Yard and Rear Yard.** A yard of thirty (30) feet shall be maintained adjacent to all residential districts.

G. *Walls, fences and required screening.*

1. All off-airport operations and storage excluding fueling shall be conducted within a completely enclosed building or within an area enclosed by a solid wall at least six (6) feet in height, provided that no objects shall be stacked higher than the wall so erected.
2. All mechanical structures and appurtenances shall be screened as approved by the Development Review Board.
3. All storage and refuse areas shall be screened as determined by Development Review Board approval.
4. Other requirements and exceptions as specified in article VII.

(Ord. No. 1840, § 1, 10-15-85; Ord. No. 1852, § 1, 11-5-85; Ord. No. 2818, § 1, 10-17-95; Ord. No. 3274, § 1, 12-7-99)

RFP, SOUTH THUNDERBIRD PARCEL

5.1805 Off-street parking.

The provisions of article IX shall apply.

(Ord. No. 1852, § 1, 11-5-85)

5.1806 Signs.

The provisions of article VIII shall apply.

(Ord. No. 1840, § 1, 10-15-85; Ord. No. 1852, § 1, 11-5-85)

RFP, SOUTH THUNDERBIRD PARCEL

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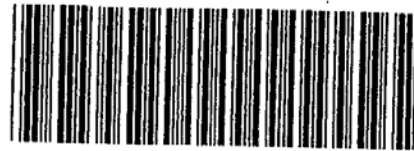
SCOTTSDALE AIRPORT

001

HOLD FOR PICK-UP

WHEN RECORDED RETURN TO:

Janet Hutchison
Robbins & Green, P.A.
3300 N. Central, Suite 1800
Phoenix, AZ 85012-2518



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

2001-0599998 07/05/2001 04:54

CINDY 4 OF 4

DECLARATION OF RESTRICTIONS FOR SOUTH THUNDERBIRD PARCEL

City of Scottsdale, an Arizona municipal corporation ("Grantor") hereby grants certain deed restrictions (the "Restrictions") in favor of Arizona Conference Corporation of Seventh-Day Adventists, an Arizona non-profit corporation ("Grantee") upon that certain real property (the "Property") located in Maricopa County, Arizona and more particularly described on Schedule "1" attached hereto. The Property is a parcel comprising approximately eight and 75/100 (8.75) acres located at the southeast corner of Scottsdale Road and Thunderbird Road in the City of Scottsdale, Maricopa County, Arizona. The Restrictions constitute restrictive covenants running with the land and burdening the Property to the effect that:

1. No retail business shall be permitted on the Property except as an accessory use to some other use of the Property. For example, a stand-alone gas station, convenience store or fast-food restaurant would not be permitted. However, a gift shop or restaurant operated as an accessory use to, and in the same building with, a museum or other non-retail use would be permitted.
2. Grantee acknowledges that Grantor is the lessor under a certain lease agreement (the "Museum Lease") dated April 9, 2001, which has not been amended. Notwithstanding anything in this document to the contrary, the Restrictions do not prohibit any activity allowed by the Museum Lease as the Museum Lease stands on the date of this document.
3. The Restrictions shall automatically expire without further act of Grantor or Grantee on the twentieth (20th) annual anniversary of this document.
4. In the event of a violation of the Restrictions, Grantee shall have a right of specific enforcement of the Restrictions. Grantee's sole remedy shall be an injunction or other equitable relief requiring Grantor to comply with the Restrictions. Without limitation, no violation of the Restrictions shall give Lessee a cause of action for damages or for any possession or other ownership rights in the Property.
5. The Restrictions shall run with the land against the Property and shall bind Grantor and its successors and assigns. The Restrictions are for the sole and exclusive personal benefit of Grantee and shall be enforceable by Grantee regardless of whether Grantee owns any real property in the vicinity of the Property.
6. The Restrictions may be amended at any time by mutual agreement of Grantor and Grantee.
7. In the event any action or suit or proceeding is brought by Grantor or Grantee to enforce this Agreement, the party which does not prevail shall pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

RFP, SOUTH THUNDERBIRD PARCEL

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SCOTTSDALE AIRPORT

002

This Declaration of Restrictions is given pursuant to that certain Real Estate and Settlement Agreement between Grantor and Grantee dated July 2, 2001.

In Witness whereof, this instrument is made this 2nd day of July, 2001.

GRANTOR:

City of Scottsdale, a municipal corporation

By:

Mary Manross
Mary Manross, Mayor

STATE OF ARIZONA)

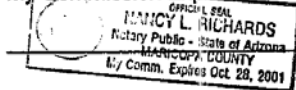
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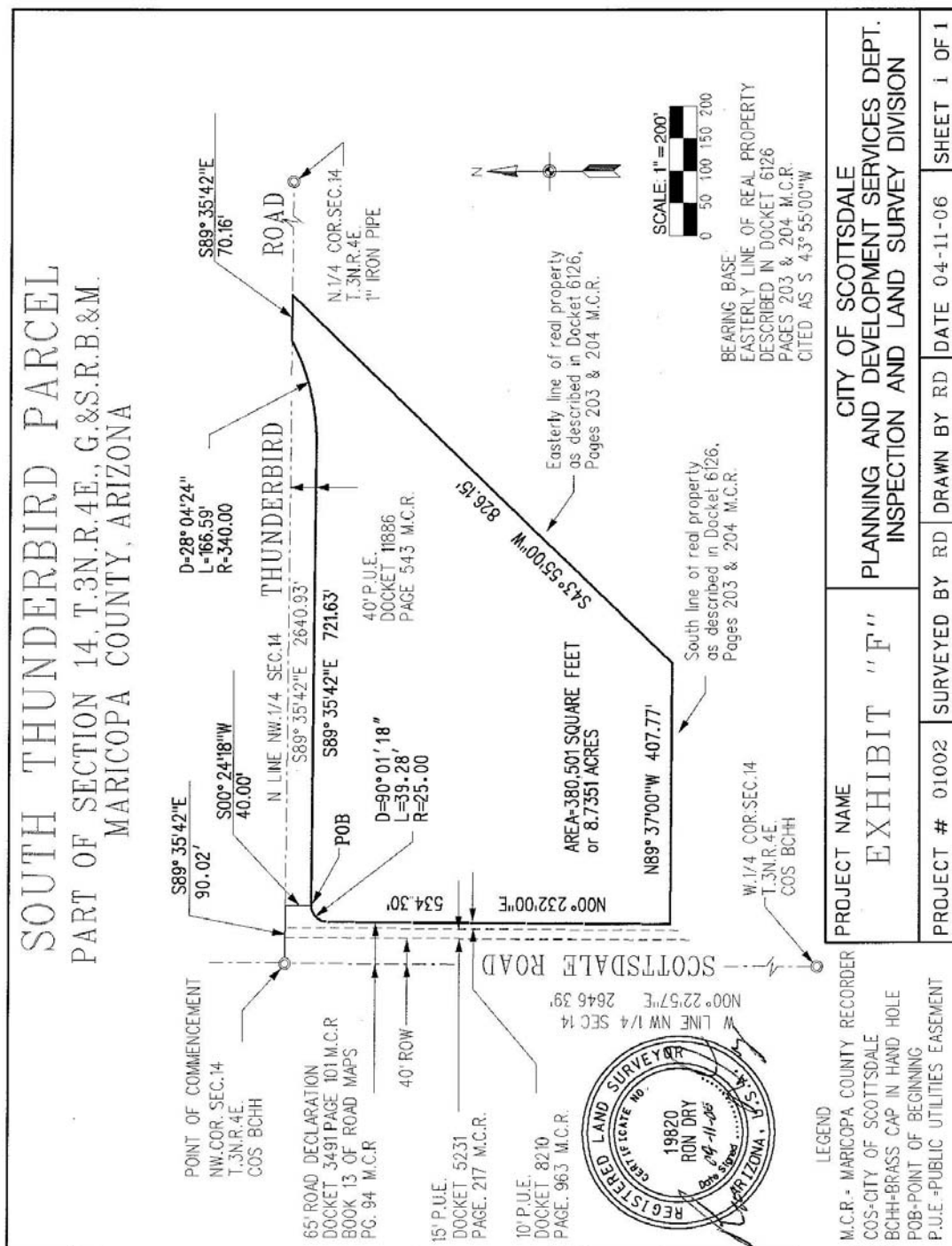
County of Maricopa)

Acknowledged before me this 2nd day of July, 2001, by Mary Manross, Mayor of the City of Scottsdale, a municipal corporation ("Grantor").

Nancy L. Richards
Notary Public

My Commission Expires:





RFP, SOUTH THUNDERBIRD PARCEL

EXHIBIT "F"

LEGAL DESCRIPTION

SOUTH THUNDERBIRD PARCEL

That part of the northwest quarter of the northwest quarter of Section 14, Township 3 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the northwest corner of said Section 14;

thence along the north line of said northwest quarter South $89^{\circ} 35' 42''$ East 90.02 feet;

thence departing said north line South $00^{\circ} 24' 18''$ West 40.00 feet to the south right-of-way line of Thunderbird Road according to Docket 11886 Page 543, records of said County, and the POINT OF BEGINNING;

thence parallel with and 40.00 feet south of said north line along said south right-of-way line South $89^{\circ} 35' 42''$ East 721.63 feet to the beginning of a curve concave to the north having a radius of 340.00 feet;

thence continuing along said south right-of-way northeasterly along said curve through a central angle of $28^{\circ} 04' 24''$ a distance of 166.59 feet to said north line;

thence departing said south right-of-way line along said north line South $89^{\circ} 35' 42''$ East 70.16 feet to point on the easterly line of that real property as recorded in Docket 6126 Pages 203 & 204, records of said County;

thence departing said north line along said easterly line South $43^{\circ} 55' 00''$ West 826.15 feet;

thence departing said easterly line along the south line of said real property North $89^{\circ} 37' 00''$ West 407.77 feet to a point on the east right-of-way line of Scottsdale Road according to Docket 8210 Page 963 records of said County, said point being 65.00 feet east of the west line of the said northwest quarter;

thence departing said south line along said east right-of-way line parallel with and 65.00 feet east of said west line North $00^{\circ} 23' 00''$ East 534.30 feet to the beginning of a curve concave to the southeast having a radius of 25.00 feet;

thence northeasterly along said curve through a central angle of $90^{\circ} 01' 18''$ a distance of 39.28 feet to the POINT OF BEGINNING.

Containing 380,501 square feet or 8.7351 acres, more or less.

Attached hereto is a plat labeled Exhibit "F" and by this reference is made a part hereof.

End of description.

